



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

ENVIRONMENT & LAND COURT SUIT NO.6 OF 2013

ELIZABETH MURUGI NJIIMA.....1ST PLAINTIFF

HUMPREY MBUREA NJAGE.....2ND PLAINTIFF

VERSUS

REGINALD L. MICHENI SOSPETER.....DEFENDANT

R U L I N G

This application is dated 15th January, 2013 and seeks orders:

1. That this application be certified urgent.
2. That pending the hearing of this application inter partes the defendants be restrained from developing or dealing in any manner whatsoever with land title No's Muthambi/Igamwathi/1201 and 1203.
3. That pending the hearing of the main suit the defendant be restrained from developing or dealing in any manner whatsoever with land title Nos. Muthambi/Igamwathi/1201 and 1203.
4. Costs of this application be provided for.

Interim orders were granted on 22.1.2013. The order in prayer 1 is spent. By consent, the parties on 23.5.13 agreed to have the interim orders maintained and have status quo remain.

The application was argued by way of written submissions. The applicants/plaintiffs submitted that they were administrators of the estate of **M'NJEMA NJAGI** alias **SOSPETER M'NJIIMA NGAGI** (deceased) and that they had been granted a Joint Grant of Letters of Administration vide Machakos High Court Succession Cause No.963 of 2009. They submitted that the deceased was the registered proprietor of Original Land Parcel No.**MUTHAMBI/IGAMURATHI/78**. They claimed that the deceased original proprietor of the suit land was manipulated by the defendant when he was in a state of ill health to subdivide the land and to transfer 2 of the resultant parcels No's Muthambi/Igamurathi/1201 and 1203 to the defendant. They claim that the deceased lacked free will and capacity to execute the disputed transactions.

The respondents/defendants have made diametrically opposed assertions. They claim that the deceased original proprietor had full knowledge and capacity to execute the disputed transactions. They have argued that they have satisfied the principles enunciated in the classic case of **Giella Vs Cassman Brown & Co., (1973) EA 358**.

I have examined the averments, documents and submissions proffered by the parties. I find that most of the issues raised can only be canvassed at the hearing of the main suit. As the Court of Appeal opined in the case of Mbutia Vs Jimba Credit Corporation & Another [1988] KLR 1:

“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge in this case had gone far beyond his proper duties and made final findings of fact on disputed affidavits.

I find that the plaintiffs' application has merit. It is allowed with costs to be in the cause.

Delivered in Open Court at Meru this 18th day of March, 2014 in the presence of:

Cc Daniel

Miss Kaaria h/b Muriithi for defendant

J. Muthomi h/b for Nduva Kitonga for plaintiff/Applicant

P. M. NJOROGE

JUDGE