



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 158 OF 2010

GLADYS MUTHONI IBIIRI.....1ST PLAINTIFF
GEORGE KATHURIMA SIKUNYI.....2ND PLAINTIFF
ABIGAEI MWENDWA MWELA.....3RD PLAINTIFF
ALIZABETH MAKANDI MWELA.....4TH PLAINTIFF

VERSUS

HENRY MWELA SIKUNYI.....1ST DEFENDANT
JIMMY KARIUKI BUSIENEL.....2ND DEFENDANT

RULING

This application is dated 24th September, 2013 and seeks orders:

1. **THAT** due to the urgency of the matter, the Honourable court be pleased to dispense with service at first instance, and hear the application expeditiously owing to its extreme and demonstrated urgency
2. **THAT** the Honourable Court be pleased to grant orders of inhibition to stop or inhibit any dealings with Land Parcels No. **LAIKIPIA/KALALU/52**; and order the maintenance of status quo in terms of occupation and possession, pending the hearing and determination of this application and suit.
3. **THAT** leave be granted to the Plaintiffs to amend the plaint filed herein on 25th November, 2010 as per the draft amended plaint annexed hereto and filed herewith;
4. **THAT** amended plaint annexed hereto be deemed to be duly filed and served;
5. **THAT** the Defendants be at liberty to file and serve an amended defence within fourteen (14) days from the date of making Orders 3 and 4 herein above, and the Plaintiffs be at liberty to file and serve an amended reply to the amended defence upon it;
6. **THAT** the costs of this application be in the cause;

Prayer 1 is spent. During interpartes hearing of the application on 5.3.2014 counsels for the plaintiffs and the 2nd defendant, by consent, agreed not to contest prayers 3, 4 and 5. they, therefore, confined their submissions to prayer 2.

The applicants sought the order of inhibition and the maintenance of the status quo. They submitted that the 1st plaintiff was the wife of the 1st defendant and that the other plaintiffs were the children of the 1st plaintiff and the 2nd defendant. The 1st plaintiff, according to the submissions, had contributed to the purchase of the suit land and was entitled to half-share of the suit land. The plaintiffs opined that the sale

to the 2nd defendant was fraudulent and craved for the orders sought to preserve the suit land pending hearing and determination of this suit.

The 2nd defendant opposed the granting of the orders sought in prayer 2. It was claimed that 2 of the children of the 1st defendant were witnesses to the sale agreement. It was argued that the plaintiffs were strangers to the suit, that they lived on another piece of land and had no title. It was also proffered that the 2nd respondent/2nd defendant had no intention of selling the suit land.

I have carefully considered the averments, annexures and the submissions of the parties. Some of the issues raised by the parties can only properly and conclusively be canvassed during the hearing of the main suit. I note that the 2nd defendant has in his replying affidavit claimed that the sale agreement between him and the 1st Respondent/ 1st defendant had been witnessed by the 1st defendant's children. But there is no claim that the 2nd, 3rd and 4th Plaintiffs/Applicants, who claim to be the children of the 1st defendant, were witnesses to that agreement. The 2nd defendant/respondent has also not controverted the claim by the 1st plaintiff that Land Parcel No. Laikipia/Kalau/52 is now registered or held jointly in the names of the 1st and 2nd defendants.

Having considered the relative weight of the propositions of the parties, I find that prayer 2 in this application is merited. It is hereby granted.

It is so ordered.

Delivered in Open Court at Meru this 2nd day of April, 2014 in the presence of :

Cc. Daniel/Christine

Kaumbi for the applicants.

P. M. NJOROGE

JUDGE