



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 798 OF 2012

IN THE MATTER OF THE ESTATE OF JOSEPH NGUNDI NTHANGA (DECEASED)

NICHOLAS MUTHOKA NGUNDI PETITIONER/RESPONDENT

VERSUS

1. ELIUD MWANIA MBUNE
2. SULPHICE NZONGA MUIAOBJECTORS/APPLICANTS

R U L I N G

1. The application dated 2nd November 2012 seeks orders that pending the final hearing and determination of this application the Respondent/servants/agents or any person claiming under him be restrained by an injunction from entering into, working on or erecting any structures on the parcel of land on Plot No. **147 – Mbiini/Maatha**.
2. Secondly, the Applicant prays that the **OCS Sultan Hamud Police Station** do assist in the enforcement of the said order.
3. According to the affidavit sworn by the 1st Appellant, **Eliud Mwanja Mbune** and a further affidavit by the 2nd Applicant, **Sulpice Nzonga Muia**, they bought some 4 pieces of land from land parcel No. **Mbitini/Maatha/147** from the deceased, **Joseph Ngundi Nthanga**. That the said vendor passed away in the year 1996 before he had transferred the purchased parcels of land to them. The Applicants' complaint is that the Respondent has invaded their land and started putting up a structure therein. The Applicants have also complained about their not being included in the petition for the grant herein as liabilities in the estate of the deceased. The Respondents have further stated that the Applicants have also not managed to obtain the Land Control Board Consent.
4. In opposition to the application the Respondent filed a replying affidavit. It was averred by the Respondent that the land in question is family land and that the deceased was only registered as a trustee of the same. That after the death of the deceased the Applicant started laying claims on the land as purchasers. That the Respondent has no Land Control Board Consent. The Respondent further asserted that he is only renovating the building in question as the building has been there since the time he was born. It was further contended that if the Applicants are creditors, they should prove so.
5. The application was canvassed by way of written submissions which I have duly considered.
6. The 1st Applicant has exhibited a sale agreement. The 2nd Applicant has not exhibited any. Non of the Applicants have exhibited the consent of the Land Control Board.
7. Under **section 3 (3) (a)** of the **Law of Contract Act Cap 23 Laws of Kenya**:-

“the contract upon which the suit is founded –

- i. **is in writing;**
- ii. **is signed by all the parties thereto.”**

- 8. Under **section 6** of the **Land Control Act, Cap 302 Laws of Kenya** the Land Control Board’s Consent is required in all transactions involving Agricultural Land.
- 9. *Prima facie*, the Applicants can be compensated in monetary terms.
- 10. The Applicants’ case has not met the threshold for a grant of injunctive orders (See **Giella –vs- Cassman Brown & Co. Ltd (1973) EA 358**).
- 11. Consequently, the application fails. Costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 20th day of November 2014.

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B. THURANIRA JADEN

JUDGE