



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT & LAND DIVISION**  
**ELC SUIT NO. 405 OF 2013**

**SYLVIA MWAKWANYAGA..... PLAINTIFF**

**VERSUS**

**JOSEPH MAINA NGANGA .....1<sup>ST</sup> DEFENDANT**

**GEOFREY KINYANJUI MUNGAL.....2<sup>ND</sup> DEFENDANT**

**ELIZABETH NYAWIRA MBUGUA.....3<sup>RD</sup> DEFENDANT**

**JONATHAN SORIMPAN MASSORE.....4<sup>TH</sup> DEFENDANT**

**JOEL MUTARURA KARANJA.....5<sup>TH</sup> DEFENDANT**

**SUSAN WAMAITHA NYOKABI.....6<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff filed the instant suit vide the plaint dated 21<sup>st</sup> March, 2013 and simultaneously with the plaint the plaintiff filed the notice of motion of even date where inter alia the plaintiff sought the following orders:

- i. That leave be granted for service of process to be effected on the defendants by way of substituted service.
- ii. That pending the hearing and determination of this application inter partes an inhibiting order do issue against title number Kajiado/kipeto/175, the original number by cancelling and nullifying the purported subdivision and title numbers Kajiado/Kipeto/4348, 4349 and 5620 and reverting the register in its original form and as it existed prior to the purported subdivision and consolidation by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants.
- iii. That upon hearing of this application inter partes this Honourable court be pleased to order rectification of the register in respect of title number Kajiado/Kipeto/175, the original number by cancellation and nullifying the purported subdivision and title numbers Kajiado/Kipeto/4348, 4349 and 5620 and reverting the register in its original form as it existed prior to the purported subdivision and consolidation by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants.

The plaintiff's application is supported on the grounds set out on the face of the application and in the supporting affidavit sworn by the plaintiff on 21<sup>st</sup> March, 2013. Inter alia the plaintiff states that she is the sole administratrix of her deceased husband JOSEPH MAINA NGANGA who was the registered owner of the parcel of land title number Kajiado/Kipeto/175. The plaintiff further states that the 1<sup>st</sup> – 6<sup>th</sup> Defendants who are unknown to her have purported to subdivide the subject parcel of land without her knowledge and/or consent and contends that the resultant subdivision are fraudulent and illegal as they were carried out without her authority and/or consent.

At the ex parte stage the court on 26<sup>th</sup> March, 2013 ordered service of process to be effected on the defendants by way of substituted service and as per the affidavit of service dated 2<sup>nd</sup> April, 2013 and filed in court on the same date the defendants were duly served by way of newspaper advertisement in the Daily Nation of Friday, 29<sup>th</sup> March, 2013. On the 2<sup>nd</sup> April, 2013 when the matter was listed before me I adjourned the hearing of the Notice of Motion to 18<sup>th</sup> April, 2013 to afford the defendants the opportunity to appear and file a response to the application.

On 18<sup>th</sup> April the Defendants had neither appeared and/or filed any response and the court granted an interim order of prohibition pending the hearing of the application inter partes on 20<sup>th</sup> May, 2013.

On the 20<sup>th</sup> May, 2013 the court directed the plaintiff to file written submission in regard to the Notice of Motion and on 26<sup>th</sup> June, 2013 the court reserved the ruling on this application for delivery on 31<sup>st</sup> July, 2013. The Defendants as at 26<sup>th</sup> June, 2013 had neither appeared and/or filed any response.

I have reviewed the pleadings, the Notice of Motion application together with the affidavit in support and the annexures and I am satisfied that indeed the plaintiff is the administratrix of the estate of the late **Joseph Nganga Maina** as per the copy of the certificate of confirmation of grant of letters of administration intestate dated 17<sup>th</sup> January, 1997 annexed to the plaintiff's affidavit and marked as "SMM1" I am further satisfied that indeed the said **Joseph Nganga Maina** was the registered proprietor of the suit property title number Kajiado/Kipeto/175 as per the copy of the Title Deed dated 22<sup>nd</sup> October, 1987 attached to the plaintiffs bundle of documents. This property as per the schedule of distribution appended to the certificate of confirmation of grant aforementioned was supposed to go to Wilfred Nganga Maina as the beneficiary.

The plaintiff has deponed that she had no dealings with any of the Defendants whom she does not even know. From an examination of the abstracts of title annexed to the plaintiffs affidavit it would appear that the 1<sup>st</sup> defendant who carried the name of Joseph Maina Nganga similar to the plaintiff deceased husband must have impersonated the plaintiffs husband and perpetrated what would be described as fraudulent and illegal acts as regards the subject suit property.

In the premises I hold the plaintiff has demonstrated she has a prima facie case with a probability of success.

I further hold that the damage she and the beneficiary of the subject parcel of land would suffer would be irreparable if the defendants are not restrained and prohibited from further dealing with the suit property. In the premises I confirm the interim order granted to the plaintiff herein pending the hearing of the suit and direct that the plaintiff fixes the suit for formal proof hearing since the defendants have neither appeared or filed any response or defence to the suit.

The costs for this application will be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2013.**

**J. M. MUTUNGI**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendants