



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 28 OF 2012

1. **SAMSON MBITHI MULEI**
2. **GRACE NGUKU KAVITA**
3. **JENNIFER MUMBUA MWIKYA PLAINTIFFS/APPLICANTS**

VERSUS

1. **BETH MBEESU MULEI**
2. **ANTHONY MUTISO NDETO DEFENDANTS/RESPONDENTS**

R U L I N G

The application dated 1/2/2012 is brought under **Order 40 Rules 1, 2, 3 and 4 of the Civil Procedure Rules Section 1A, 1B and 3A of the Civil procedure Act** and all enabling provisions of the law.

The application seeks the following orders:-

1. **(Spent).**
2. **That a temporary order of injunction do issue restraining the defendants either by themselves, their servants, agents or any other person acting through them or under their instructions from selling, sub dividing, leasing, charging, disposing or in any other way from interfering with Land Parcel number MITABONI/THINU/1307 and MACHAKOS/MUA HILLS/201 pending the hearing and determination of this application.**
3. **THAT a permanent order of injunction do issue restraining the Defendants either by themselves, their servants, agents or any other person acting through them or under their instructions from selling, sub dividing, leasing, charging, disposing or in any other way from interfering with Land Parcel Number MITABONI/THINU/1307 and MACHAKOS/MUA HILLS/201 pending the hearing and determination of this suit.**
4. **THAT the costs of this application be provided for.”**

The application is supported by the affidavit sworn by the Appellants on 1/2/2012.

The Applicants are the children of the 1st Respondent with the late **John Nzomo Mulei**. The 1st Defendant and her late husband have other eleven (11) children who are not parties herein.

The Applicants' complaint is that the 1st Respondent has without their consent or knowledge disposed the estate left behind by their late father. That one of the properties, land parcel No. **Machakos/Mua**

Hills/201 was sold by the 1st Respondent to the 2nd Respondent, **Antony Mutiso Ndeto**. It was further averred that the only parcel of land not yet sold is **Mitaboni/Thinu/1307** where the family home stands. According to the Applicants, the 1st Respondent has threatened to sell the said family land, hence the orders sought.

In opposition to the application, the 1st Respondent swore a replying affidavit on 29/2/2012. The 1st Respondent stated that she is the administrator of the estate of her late husband and that it was in the said capacity that she dealt with the properties in question.

The 1st Respondent contended the land parcel No. **Machakos/Mua Hills/201** belonged to her and she had a right to deal with it in any manner that she pleased.

The 2nd Respondent also opposed the application. He swore a replying affidavit on 20/2/2012. The 2nd Respondent stated that he is not a servant or agent of the 1st Respondent and averred that he has no interest in land parcel No. **Mitaboni/Thinu/1307**. The 2nd Respondent further stated that he purchased land parcel No. **Machakos/Mua Hills/201** for a consideration of Kshs.5,100,000/=. That the land was subsequently transferred to him after the due process of transfer was completed and he was duly registered as the owner and issued with a Title Deed. The 2nd Respondent stated that he took possession of the land and commenced developments thereon.

All the parties filed further affidavits but the issues raised are not directly related to the application at hand.

The application was canvassed by way of written submissions which I have duly considered.

The Applicants in their submissions abandoned the prayers sought against the 2nd Respondent. The 2nd Respondent has however fully participated to the application and is entitled to costs.

On prayer number 3 which seeks an order of permanent injunction, I agree with the submissions by counsel for the 1st Respondent that the same can only be issued after the full trial.

On prayer number 2, land parcel No. **Mitaboni/Thinu/1307** is registered in the name of the 1st Respondent. The 1st Respondent is also the administrator of the estate of her late husband. If the 1st Respondent is not administering the estate in accordance with the law, that is a matter to be addressed in the succession cause. Land parcel No. **Machakos/Mua Hills/201** is registered in the name of the 2nd Respondent therefore issuing any injunctive orders against the 1st Respondent would not make any sense at all. In any event, from the wording of prayer No. 2, any orders issued would lapse upon the determination of this application. The Applicants' case has failed to meet the conditions for a grant of injunctive orders. (*See Giella –vs Cassman Brown Ltd (1973) EA 358.*)

Consequently, the application fails with costs to the Respondents.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **18th** day of **July** 2013.

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B. THURANIRA JADEN

JUDGE