



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL APPEAL NO. 166 OF 2013**

STEPHEN KIBURI.....APPLICANTS/PLAINTIFFS

VS

FRANCIS MATHETA & 3 OTHERS..... RESPONDENTS/DEFENDANTS

**RULING**

This application is dated 19th day of March, 2013 and is premised upon Order 51 rule 1 AND Order 40 Rule 1,2,3, and Order 42 rule 6 of the Civil Procedure Rules and Sections 1A and 1B of the Civil Procedure Act. It seeks Orders;-

- 1. THAT this application be Certified Urgent and heard exparte in the 1st instance.**
- 2. THAT there be stay of execution of the ruling dated 22/2/2013 in Maua CMCC No. 200 of 2012 and the Appellant be put in possession of Parcel Number 1766, 4577, 6791, 9889, 9890, 9891 AKIRANGONDU 'A' ADJUDICATION SECTION pending the hearing and determination of this application.**
- 3. THAT the Honourable Court be pleased to review an order of injunction issued in favor of the 1st and 2nd Respondents pending hearing and determination of Maua CMCC NO. 200/2012.**
- 4. THAT the file, Maua CMCC No. 200 of 2012 be transferred to Meru High Court Land and Environment Court for hearing and final determination.**
- 5. That costs be provided for.**

**Prayer 2 is spent.**

The application was canvassed inter partes on 26/6/2013. The applicant sought to show the Court that the suit lands belonged to his brother, the late Ernest Mutegi M'Thilane and that upon his demise his late wife had irregularly had the same transferred to herself. It was said that the 1st and 2nd respondent colluded with the third respondent to perpetuate this illegality. It was denied that the 1st and 2nd respondents were purchasers for value and it was the applicant's case that they had inter-meddled with the estate of a deceased person.

The applicant feels that his application and prayers therein were meritorious so that the suit lands can be preserved in the interests of the rightful owners, the children of his deceased brother. The applicant felt

that the applicant's grandmother deponed in the Lower Court improperly.

For the respondents, the application was strongly opposed. They said they bought their parcels of land from Grace Nkirote Mbaabu, deceased, the wife of the applicant's deceased brother. She then subdivided the balance to her children, Kenfrey Mwiti Mutegi, Titus Mutwiri, Glory Makena Mutegi and Priscilla Kathambi Mutegi. It was claimed that the applicant had tried to grab the land when Grace Nkirote was alive and sick and she had to seek police protection. Copies of documents supporting this claim were shown to court.

It was claimed that the applicant had chased away the children of his deceased brother, destroyed their home and appropriated their property. Proof of intervention by the Njuri Ncheke Council of Elders, Mwenjelene House, Akirangondu Location, was

proffered.

The respondents said that the land they had bought from Grace Nkirote was registered in her name. This being the case no succession proceedings were required. Also since the suit lands were transferred to the children by their mother when she was alive, no succession proceedings are necessary.

For the 1st and 2nd respondent's it was submitted that this application was only meant to delay the determination of this dispute.

Mr Kiongo for the Attorney General on behalf of the 3rd Respondent opposed the application. He submitted that the disputed parcels were properly transferred by Grace Nkirote, deceased to the 1st and 2nd respondents and to her children. He felt that this was a family dispute into which the 3rd respondent should not be dragged.

I have examined the averments of the parties. I have also considered their submissions.

It is noted that the applicant did not say anything at all regarding prayer 4. The applicant has not controverted at all, the claim that the children of his brother lived with their maternal grandmother after he chased them away, destroyed their home and appropriated their property.

The ruling of the Lower Court notes that affidavits filed therein depict the applicant in very bad light and specifically alludes to an affidavit sworn by their grandmother, Joyce Koolo Mbaabu, which claims that the applicants aim is to squander the property

which was left behind by the children's parents. The lower Court's Ruling also opines that the court was not sure that the applicants intention was noble. The court, as a result, felt that the children's grandmother appeared to be best suited to deal and handle the property of the children.

Regarding the Affidavits sworn by Joyce Koolo, the grandmother of the children of Ernest Mutegi and Grace Nkirote (both deceased), I find that in the interest of Justice, the reliance upon them by this Court and by the Lower Court was not improper.

Prayer 2 seeks stay of execution. The applicant has not satisfied the Court that he will suffer substantial loss if stay is not granted. I, therefore, do not need to delve into the issue of security. I am also not satisfied that prayer 3 is merited. As, I have already noted, prayer 4 was not canvassed at all.

In the circumstances, the application is **dismissed** with costs to the respondents.

***It is so ordered.***

Delivered in open Court at Meru this 14th day of August 2013 in the presence of;- Court Clerk ;- Daniel Nyagaka present for applicant's. Advocate for respondents – absent. Kieti present for 3rd respondent.

