



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU E&L NO. 72 OF 2013

DAVID MWENDA MWIKA.....PLAINTIFF

VS

CHARLES MURUNGI M'MAUTA

M'MWIKA AND 2 OTHERS DEFENDANTS/RESPONDENT

RULING

The application herein is dated 20th March 2013 and seeks orders.

- 1. That the Honourable Court be pleased to certify the annexed application of utmost urgency and hear the same in the first instance due to its urgency (sic).**
- 2. That the Honourable Court be pleased to inhibit all dealings with land parcels NO'S. 1542,6390, AND 4464 AMWATHI MUTUATI 11A Adjudication Section pending hearing and determination of this suit or until further orders of this court.**
- 3. That the Honourable Court be pleased to issue an order of injunctions restraining the defendant from disposing or transferring the land parcel NO'S. 1542/6390 AND 4464 AMWATHI/MUTUATI/11A pending hearing and determination of this suit.**
- 4. That an order of injunction restraining the defendant from evicting and interfering in any manner with the plaintiffs property on land parcel NO'S.**

1542, 6390 and 4464 AMWATHI/MUTUATI 11A Adjudication Section pending hearing and determination of this suit.

During inter-parties hearing of the application on 1/7/2013, the applicant said that he wanted an order so that he could get his father's land. The court

patiently explained to him that the hearing was not for the main suit but for his application dated 20/3/2013. He was even not sure regarding the date of his application. The Court felt that he either was not sure of what relief he sought from the court or successfully feigned ignorance.

Mr Kiongo, for the Attorney General, countered that as the applicant did not even know the date of his application nor the relief he sought from the court, it should be dismissed with costs.

I agree that the applicant failed to prosecute his application dated 20/3/2013. I also note that the defendants had not made any replies to the application when it came up for inter-parties hearing. Given the fact that the application dated

20/3/2013 was not prosecuted by the application during the inter-parties hearing of the same, I have no choice but to dismiss it. I grant no order as to costs. In doing so, I am persuaded by the fact that the defendants had not responded to the application. Indeed, the 1st defendant did not turn up in court even after being served by the plaintiff.

I, however, note that the applicant has claimed that his late father's parcels of land were transferred to the defendant, his brother, before institution of the succession proceedings was done. The allegation of fraud is a serious matter which can only be properly ventilated and determined at the hearing of the main suit. The applicant claims that he lives on the suit lands. He also claims that the

1st defendant wants to evict him from the suit lands and also to sell them.

In my view, I think this is one case where the court may invoke Section 63 of the Civil Procedure Act to prevent the ends of justice from being defeated and make the following interlocutory Orders which appear to me to be just and convenient;-

1. That all dealings with land parcel Numbers, 1542, 6390 and 4464

AMWATHI/MUTUATI/11A Adjudication Section be inhibited by this order of inhibition until this case is heard and determined.

2. That the 1st defendant be restrained by an order of injunction from evicting the applicant from parcel Number, 1542, 6390, and 4464

AMWATHI/MUTUATI/11A Adjudication Section and from interfering with the applicants properties on the said parcel of land.

It is so ordered.

Delivered, dated and Signed in open court on 7th Day of August, 2013 in the presence of :

Court Clerk: Mwonjaru/Daniel

Alfred Kitheka for plaintiff

Kiongo for 2nd, 3rd and 4th defendants.

1st defendant -absent

P.M. NJOROGE JUDGE