



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 199 OF 2008**

**MUTIRITHIA FARMERS PUBLIC CO. LIMITED.....PLAINTIFF/APPLICANT**

**VERSUS**

**PAUL NJAMBA GATARI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**PETER NJUGUNA KARIUKI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**ESTHER WANJIRU THAIRU (Sued as an administrator**

**of the Estate of FREDRICK THAIRU.....3<sup>RD</sup>**

**DEFENDANT/RESPONDENT**

**RULING**

The applicant, Mutirithia Farmers Public Company Limited brought this suit against the three respondents, its members, for orders that the latter do return or alternatively re-transfer certain unspecified parcels of land allegedly unlawfully taken by them from the applicant

In the meantime, by a notice of motion dated 10<sup>th</sup> August, 2011, the applicant has moved this court to restrain the respondents from selling, sub-dividing or disposing of:

- i) shamba No.71 now re-subdivided is known as Mau Summit Molo Block 1/No.1077, 1078, 1079, 1080, 1082, 1083, 1084, 1085 and 195 (Mutirithia) held by the 2<sup>nd</sup> respondent, Peter Njuguna Kariuki;
- ii) shamba No.,89 – re-subdivided into Mau Summit Molo Block 1/No.1187, 1188, 1189, 1190, 987, 986, 985, 984, 983, 982, 981, 980 and 278 (Mutirithia) and held by the 1<sup>st</sup> respondent, Paul Njamba Gatari;
- iii) shamba No.41 and 335 (Mutirithia) – also Mau Summit Molo Block 1/988, 938 and 445.

It is the applicant's contention that the respondents illegally acquired the above parcels of land from it while they were members of a probe committee appointed to inquire into the affairs of the applicant.

Upon discovery of the acquisition, the applicant brought this suit to recover the parcels. While the suit is pending determination, the respondents have caused a survey to be conducted with a view to sub-dividing and eventually selling the parcels in question to third parties. The applicant is apprehensive that should

the intended sale proceed and given the number of parcels involved, the entire substratum of the suit would be destroyed.

There is no response to the application on record. The hearing notice was served and received under protest, but counsel for the respondents did not find it necessary to attend or ask another counsel to hold his brief as is the settled practice. The matter, as a result, proceeded *ex parte*.

The averments to the effect that the parcels in question were transferred from the applicant to the respondents by the latter while serving as members of the probe committee and the fact that the respondents are in the process of disposing of the parcels have not been challenged. It follows that there is a basis in the applicant's apprehension of the suit properties being transferred to third parties to its detriment. Similarly and for the reasons stated, the balance of convenience tilts in favour of the applicant.

There will be injunction in terms of paragraph 3 of the motion dated 10<sup>th</sup> August, 2011 pending the hearing and determination of this suit.

Costs to be in the cause.

**Dated, Signed and Delivered at Nakuru this 13<sup>th</sup> day of  
February, 2012.**

**W. OUKO  
JUDGE**