



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENTAL & LAND CASE 294 OF 2011**

**EUNICE WAIRIMU MUTURI**

**WASHINGTON MUCHIRI MUTURI ..... PLAINTIFFS**

**VERSUS**

**RUTH NYAMBURA CHUCHU**

**ZIPPORAH WANGUI CHUCHU**

**FLORENCE NJERI CHUCHU ..... DEFENDANTS**

**RULING**

Pursuant to a Limited Grant of Letters of Administration over the estate of the *late Gerald Muruti Maina*, Eunice Wairimu Muturi and Washington Muchiri Muturi filed this suit against the Defendants. They are seeking *inter alia* for a permanent order of injunction restraining the Defendants from dealing with *Land Parcel No. 36/111/222* in Nairobi. They are also seeking for an order of specific performance compelling the Defendants to complete the sale agreement dated 19<sup>th</sup> March, 2010.

The Plaintiffs also filed a Notice of Motion under the provisions of ***Order 40 Rules 1 and 4 of the Civil Procedure Rules***. The Applicants are seeking for an interim order of injunction pending the hearing and determination of the suit.

The application is supported by the grounds stated on the body thereto and the matters deposed to in the supporting affidavit.

Briefly stated, the Defendants entered into a sale agreement with the late Gerald Muturi Maina who agreed to purchase *Land Reference No. 36/11/222* for Kshs.23,000,000/=. The agreement was dated 19<sup>th</sup> March, 2010, and the transaction was supposed to be completed within ninety [90] days of the signing of the agreement. Unfortunately, Gerald Muturi died before the transaction was completed but the Plaintiffs indicated to the Defendants their desire to complete the transaction. Indeed, they obtained a Limited Grant of Letters of Administration and issued a completion notice to the Defendants. The Defendants purported to nullify the sale agreement on the grounds that the Defendants had no legal capacity to deal with the estate of the late Solomon Chuchu Watachu before a grant of representative was issued and confirmed. That line of defence is also what the Defendants have pursued in their written statement of defence.

However, the Defendants' were served with this Notice of Motion but they did not file any replying

affidavit (I cannot see any replying affidavit on record).

The Defendants were represented by counsel on 1<sup>st</sup> July, 2011, when the court gave directions on how the Notice of Motion should proceed to hearing. The Defendants were given time to file their replying affidavits and written submissions. The court further extended time for the Defendants to fully comply with the directions. The Defendants did not comply and did not attend court when the application came up for hearing. As such, the Notice of Motion by the Plaintiff dated 30<sup>th</sup> June, 2011 is not opposed. In the absence of any opposition, I hereby grant prayer No. 4, that is:

*“An order of injunction restraining the Defendants/Respondents jointly or severally, their agents, servants and/or employees from selling, leasing, subdividing or dealing with the plot known as Land Reference No. 36/111/222 Nairobi until the determination of the suit.”*

This order shall remain in force for a period of one year within which term, the Plaintiff should prosecute the suit.

The Plaintiff shall have the costs of this application.

**Ruling read and signed this 3<sup>rd</sup> day of February, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**  
**Note:**

*This application was heard and concluded on 10<sup>th</sup> November, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceed to write and append my signature thereto in my new capacity*