



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

Civil Suit 53 of 2012

**JACKSON MASIBO**(Suing through job ngukhunasi jakson the holder of General Power of Attorney) .....**PLAINTIFF**

~VRS~

**MOSES N. SANGURA**.....**1<sup>ST</sup> DEFENDANT**  
**ROBERT S. MASIBO**.....**2<sup>ND</sup> DEFENDANT**

**RULING**

The motion filed on 13/4/2012 seeks that the Defendants and all those acting under them be restrained by an order of temporary injunction from wasting, alienating, trespassing, developing or in any other manner interfering with land parcel no.Bokoli/Mukuyuni/878 pending the hearing and determination of the suit.

It is not in dispute that the Plaintiff is the registered proprietor of the suit land since 1964. It measures 8.5 hectares or thereabouts. Job Ngukhunasi Jackson through whom he is suing is his son. The 2<sup>nd</sup> Defendant is also his son. The sons have, apparently, different mothers. The 2<sup>nd</sup> defendant stays on the suit land. On 10/2/2012 the 2<sup>nd</sup> Defendant purported to sell 3.7 acres of the suit land to the 1<sup>st</sup> Defendant for Ksh.1,180,000/= which was paid in full. The 1<sup>st</sup> Defendant was put in possession. The Plaintiff's case is that he was unaware of the sale and that the transaction was fraudulent and illegal. The Defendants claim that the Plaintiff was involved, he had given the portion to the mother of the 2<sup>nd</sup> Defendant and that he knew and gave authority to the sale.

Before the Plaintiff came to court he complained to the local administration which ruled in favour of the Defendants and endorsed the sale.

The suit was filed for a permanent injunction against the Defendants and those acting under them. In the plaint there is admission that the 1<sup>st</sup> Defendant is in possession. The 2<sup>nd</sup> Defendant lives on the land as the son of the Plaintiff. He was born here. The two can only be removed by a temporary mandatory injunction which has not been sought. An allegation of trespass against them cannot be maintained in the circumstances as they have a basis to be on the land.

The Plaintiff will be entitled to argue that the 2<sup>nd</sup> Defendant had no capacity to sell the land, the transaction has not received the blessings of the Land Control Board, or that he is not the one who was paid the purchase price. These will be legitimate concerns that he will raise at hearing.

I decline to grant the orders sought but, in the interest of justice and in order to protect the suit land from any possible alienation, I make an order that the District Land Registrar does register an inhibition against the title until the suit is heard and finalized.

Dated, signed and delivered at Bungoma this 26<sup>th</sup> day of July 2012.

**A. O. MUCHELULE**  
**JUDGE**

