



**1. ALEX ISOE MOSETI**  
**2. CHARLES MWANGI MUCHIRI**  
**3. JOHN MAKUSI SIMIYU.....PLAINTIFFS**

**VERSUS**

**1. LORNA ADHIAMBO ADUOR**  
**2. CHARLES ONSARE GICHABA**  
**3. RICHARD OLUOCH OCHIEL**  
**4. R & T EMPLOYEES HOUSING CO-OPERATIVE SOCIETY LTD**  
**5. DISTRICK LAND REGISTRAR MACHAKOS.....DEFENDANTS**

### **R U L I N G**

**1.** This is an application by the Plaintiff (by **chamber summons dated 22<sup>nd</sup> January 2010**) for an order of temporary injunction to restrain the Defendants from “alienating, transferring or otherwise dealing with the suit properties” pending disposal of the suit.

**2.** The application was brought under **Order XXXIX, rules 1, 2, 2A (1) and 3** of the old **Civil Procedure Rules** (the **Rules**). **Section 3A** of the **Civil Procedure Act, Cap 21** (the **Act**) that saves the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court, has also been cited.

**3.** The grounds for the application appearing on the face thereto are -

(i) That the Plaintiffs are the legal and registered owners of the two suit lands.

(ii) That the Defendants have interfered with the suit lands “by unlawfully conspiring to remove the names of the Plaintiffs from the titles and sabotaging and blocking transfers duly lodged at the District Lands Registry at Machakos”.

(iii) That the Defendants intend to unlawfully alienate and transfer the suit lands to third parties unknown to the Plaintiffs.

(iv) That the Plaintiffs stand to suffer irreparable damage.

**4.** The application is supported by an affidavit sworn by the 1<sup>st</sup> Plaintiff. To this affidavit are annexed various documents, including copies of title deeds to the two suit lands which are in the joint names of the Plaintiffs.

5. The 1<sup>st</sup> to 4<sup>th</sup> Defendants have opposed the application by **replying affidavit filed on 3<sup>rd</sup> February 2010**. The same is sworn by the 1<sup>st</sup> Defendant. Issues of jurisdiction of the court are raised. It is also pointed out that the suit is essentially about a dispute over the management of the 4<sup>th</sup> Defendant, a co-operative society.
6. The application was canvassed by way of written submissions. Those of the Plaintiffs were filed on 30<sup>th</sup> March 2010 while the 1<sup>st</sup> to 4<sup>th</sup> Defendants' submissions were filed on 10<sup>th</sup> May 2010. The 5<sup>th</sup> Defendant did not file any papers in respect to the application.
7. I have considered the submissions filed, including the cases cited. I have also perused the plaint. No statement(s) of defence appear to have been filed by the Defendants.
8. It is apparent that the Plaintiffs were registered as proprietors of the suit lands in their capacities as the then officials of the 4<sup>th</sup> Defendant, and therefore as trustees of it. The 4<sup>th</sup> Defendant is a co-operative society duly registered under the Co-operative Societies Act. There appears to have arisen subsequently disputes over the management of the 4<sup>th</sup> Defendant which appears to have been resolved administratively by the Ministry of Co-operative Development. Such resolution appears to have included an administrative decision to bar the Plaintiffs from management of 4<sup>th</sup> Defendant, upon which the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Defendants may have been elected into office as officials of the 4<sup>th</sup> Defendant.
9. At any rate, upon the material now before the court, I am satisfied that the present suit is essentially over the management of the 4<sup>th</sup> Defendant which has been disguised as a suit over property between the Plaintiffs and the 1<sup>st</sup> to 4<sup>th</sup> Defendants. I am not satisfied that this court is the correct forum to resolve that dispute. It is a dispute that ought to be resolved under the machinery established under the Co-operative Societies Act.
10. I am thus not satisfied that the Plaintiffs have demonstrated a *prima facie* case with a probability of success, or that they stand to suffer irreparable loss. The application by chamber summons dated 22<sup>nd</sup> January 2010 is entirely without merit. It is hereby dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants. Any interim injunction still in place is hereby lifted. Those will be the orders of this court.
11. The delay in preparation of this ruling is deeply regretted. It was caused by my poor state of health the last few years. But thanks God I have now regained my full health.

**DATED AT NAIROBI THIS 15<sup>TH</sup> DAY OF AUGUST 2012**

**H. P. G. WAWERU**  
**JUDGE**

**COUNTERSIGNED AND DELIVERED AT MACHAKOS THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2012**

**ASIKE-MAKHANDIA**  
.....  
**JUDGE**