



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL CASE NO. 76 OF 2010

ISAAC ARUSEI

MULWA.....APPLICANT

AND

PAUL KINUTHIA THIGA AND NGANGA OLE PARKESUI being

sued as personal

representatives of SIKA OLE PARKESUI (deceased).....1ST RESPONDENT

**DOMINIC TOROMI.....2ND
RESPONDENT**

RULING

The Plaintiff, **Isaac Arusei Mulwa**, seeks interim injunction in his Chamber Summons application dated 3/11/2010 to restrain the Defendants, their agents, and/or servants from trespassing upon the suit land known as Plot 19 M/E which is also referred to as Plot No. 19 Lower Majengo within Narok Township. Among the grounds stated for seeking the injunction order is the fact that the Plaintiff is the administrator and beneficiary of the estate of Cherehi Rono alias Gogo (deceased) who was the registered allottee of the said piece of land. As a further ground for making the application the applicant states that the 1st Defendant has attempted to sell the suit land to the 2nd Defendant while the suit was still pending for hearing.

The Plaintiff filed this suit against “the personal representatives of one **Sika Ole Parkesui**, deceased, the owner of the suit land, seeking their eviction and the eviction of the 2nd Defendant from the suit land as the latter claims to have purchased the land on 1/7/2009 from one **Nganga Ole Parkesui** whoostensibly sold qua administrator of the estate of the late Seka Ole Parkesui who was the owner of the suit property prior to his demise. The suit property is now part of his estate.

In the supporting affidavit sworn by the Plaintiff on 3/11/2010, the Plaintiff has not shown that he holds a grant of letters of Administration to the estate of the late Seka Ole Parkesui, deceased who died leaving the suit land. It is not clear on what legal basis the Plaintiff claims to be a personal representative of the said deceased who died owning the suit land. The Plaintiff has alluded in paragraph 6 that there exists suit No. 97 of 2007 involving the 1st Defendant and the Plaintiff regarding the suit land. But the pleadings in that suit were not annexed as exhibits.

The 2nd Defendant purports to have purchased the suit land on 1/7/2009 after the death of the original allottee, Seka Ole Parkesui, deceased. Such sale cannot be valid as the purported seller does not appear to have been the personal administrator of the estate of Seka Ole Parkesui.

In effect therefore, the Plaintiff has failed in the Chamber Summons application to show his legal capacity by exhibiting a copy of the grant of letters of administration. The suit clearly seems to be incompetent on this ground. By the same token, the application is incompetent. The sale of the suit land to the 2nd Defendant, Dominic Torome alias Dominic Saruni Torome is clearly null and void as the vendor lacked capacity to sell to him or to transfer title. I have no hesitation but to strike out the application which I hereby do.

I make no orders as to costs.

DATED at KERICHO this 23rd Day of MARCH, 2011

G B M KARIUKI, SC

RESIDENT JUDGE

COUNSEL APPEARING

Mr. W. R. Kiprono, Advocate, for Mr. J.M. Motanya, Advocate for the Applicant

Mr. Ocheo Onduso, Advocate, for the Respondents

Mr. Bett, Court clerk