



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 7 OF 2011**

RAHAB NYAKIO ..... 1<sup>ST</sup> PLAINTIFF  
LEAH WAMBUI NJOYA ..... 2<sup>ND</sup> PLAINTIFF  
GRACE NJOKI NJURU ..... 3<sup>RD</sup> PLAINTIFF  
(Suing as the personal legal representatives of the late Jeremaih Njau Mukuba)

VERSUS

JAMES MUKUHA NJAU ..... DEFENANT

**RULING**

The plaintiffs herein are the personal legal representatives of the late Jeremiah Njau Mukuha and the defendant is their only brother. From the pleadings herein the dispute involves two suit properties known as Githunguri/Githunguri/12 and Githunguri/Githunguri 88 which the defendant is said to have interfered with to the detriment of the plaintiffs and more so the 1<sup>st</sup> plaintiff.

From the material before me the relationship between these siblings has not been smooth at all. In fact, the defendant has been accused by the plaintiffs of wrongly believing that the law is wrong in allowing women to inherit their father's property. Towards that front, he is accused to have converted his late father's assets to his own use. On 23<sup>rd</sup> March, 2007 the court revoked the appointment of the defendant as an administrator of their late father Jeremiah Njau Mukuha. That notwithstanding, the defendant has continued to interfere with the suit properties as set out in the application by way of Chamber Summons dated 11<sup>th</sup> January, 2011. That application is brought under Order XXXIX Rules 1 to 3 of the Civil Procedure Rules.

The said application seeks to restrain the defendant from interfering with the said property and in answer thereto, he has filed a replying affidavit denying the plaintiff's allegations set out in the said application. Both learned counsel appearing for the parties have filed submissions to address the said application. I have taken some time to go through this acrimonious family dispute. I have come to the conclusion that, whatever decision is made at this stage is not going to resolve the issues between the parties. On the contrary, it will widen the differences between these parties. In the circumstances, I have some doubts as to whether any of the parties should be granted or allowed to stand on the positions they have taken. That being the case, I have decided to resolve this matter on a balance of convenience. That balance of convenience will be to maintain the status quo and order that this suit shall be fast tracked in all respects so that the hearing of the main suit may be reached as early as possible. There is no indication on the record that the defendant has been served with summons to enter appearance. If that has not been done, the said summons should be served upon him within 14 days of today and he should file his defence within 15 days of service of the summons. After service of the defence the plaintiff shall have 7 days within which to file a reply to the defence if need be. Thereafter, the parties have to comply with Order 11 of the Civil Procedure Rules, 2010 within 30 days from the date of filing such a reply. The parties shall then list the case for a pre-trial conference such that the main suit is listed for hearing as early as the court diary shall allow. I believe that if the time table I have set is strictly followed the interest of justice shall be met in this matter. The costs shall be in the cause.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of July, 2011.***

**A. MBOGHOLI MSAGHA**  
**JUDGE**