



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CIVIL CASE 102 OF 2004**

**MULI MUINDI ..... 1<sup>ST</sup> PLAINTIFF**

**KASIKA MULI MUINDI ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ROY NGOMO MULI ..... DEFENDANT**

**RULING**

1. On 13/9/2004, the Plaintiffs herein, **Muli Muindi** and **Kasika Muli Muindi** filed their **Plaint** and the principal prayer is one of a “**permanent injunction restraining the Defendant from moving into and occupying Land parcel No. Makindu/Kalii/1124**”. Costs are also sought.

2. On 13/11/2007, the Plaintiffs filed a Chamber Summons under Order XXXIX Rules 1 and 2 of the Civil Procedure Rules seeking a temporary injunction restraining the Defendant from trespassing into or in any manner dealing with the suit land until the suit is heard and determined.

3. It is deponed in the Supporting Affidavit sworn on 13/11/2007 by the 1<sup>st</sup> Applicant that the 2<sup>nd</sup> Applicant and the Respondent are both children of the 1<sup>st</sup> Applicant and that he transferred the suit land to the 2<sup>nd</sup> Applicant and that by a “**declaration**” dated 15/8/1993, he declared that he had bequeathed the land to his daughter, the 2<sup>nd</sup> Applicant and that any member of his family who refuses to abide by that declaration would stand “**cursed**” and would bear the consequences of the “**curse**”. That the Respondent by an agreement before the Chief Mbitini Location accepted to move and cultivate the 1<sup>st</sup> Applicant’s land at Kyumile area and he did so. The Respondent’s response in his Replying Affidavit sworn on 7/11/2008 is that he was unhappy with his father’s decision to transfer the suit land to his sister, the 2<sup>nd</sup> Applicant and he objected to any such attempt but in October 2005, the transfer was effected and a title deed issued to the 2<sup>nd</sup> Applicant. He then filed a case before the Makueni District Land Disputes Tribunal (being its case No. 84/2005 but the Tribunal decided to await the outcome of the present suit.

4. The Respondent further deponed that he lives on the suit land and has done so since 1998 and he is entitled to it beneficially.

5. I have taken into account submissions made and to my mind, this matter should be fully and finally resolved by the Makueni District Land Tribunal by a revival of its Case No. 84/2005. I say this with

respect because in his Statement of Defence dated 30/9/2004, the Defendant pleads that he occupies the suit land equally with his sister. Ownership is not in dispute before me presently. What is in dispute is whether he is in fact a trespasser on land previously belonging to his father and later transferred to his sister. That is a matter properly within the purview of section 3 (1) of the Land Disputes Tribunals Act.

6 I will therefore exercise discretion and order that the dispute herein be arbitrated by the Makueni Disputes Land Tribunal and its decision forwarded to this court for further action.

7.The Application and the suit shall be determined in terms of the Tribunal's Award subject to the powers of this court to make such other orders as it may think fit.

8.Orders accordingly.

Dated and delivered at Machakos this **19<sup>th</sup>** day of **May** 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Makau h/b for Mr Sila for Respondents**

ISAAC LENAOLA

JUDGE