



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Environmental & Land Case 512 of 2008**

**ALVIN KAMANDE NJENGA .....1<sup>ST</sup> PLAINTIFF**

**DERICK KARIUKI NJENGA .....2<sup>ND</sup> PLAINTIFF**

**VS.**

**ESTHER NJERI NJENGA .....1<sup>ST</sup> DEFENDANT**

**JUDITH NYORO (Suing as the widow and legal**

**Representative and Administratrix of the**

**Estate of ANDREW NYORO NJENGA.....2<sup>ND</sup> DEFENDANT**

**LUCY WANJIKU MUCHEKEHU .....3<sup>RD</sup> DEFENDANT**

**JOSEPHINE NDUTA KIRIITHI .....4<sup>TH</sup> DEFENDANT**

**BANCY GATHONI MUSA .....5<sup>TH</sup> DEFENDANT**

**SOPHIE KABURA MACHARIA.....6<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiffs herein are the sons of the late Laban Njenga Mundia who is said to have been the owner of parcel of land known as No. Limuru/Ngecha/1966-1975 originally known as title No. Limuru/Ngecha/114.

They brought this suit against the defendants saying that the said defendants have divided the said piece of land and allocated the same to themselves to the total exclusion of the plaintiffs thereby disinheriting the said plaintiffs from the estate of their late father. It is the plaintiffs' case that the actions of the defendants were fraudulent and have set out the particulars of fraud in their plaint.

Following the said plaint, the plaintiffs filed an application by way of chamber summons under Order 39 rules 1, 2, 2a (i) of the Civil Procedure Rules and sections 3 and 63(C) of the Civil Procedure Act for injunction orders and that the *status quo* prevailing be maintained until the determination of the suit they have filed.

The chamber summons application is supported by an affidavit sworn by the 1<sup>st</sup> plaintiff, Alvin Kamande

Njenga. There are also several grounds which have been set out on the face for the said application. In the said grounds, the applicants state that they are bound to suffer irreparably as the defendants are about to evict them from the said parcels of land using Limuru Civil Case No.167 of 2008.

Should the defendants succeed, they are likely to transfer or dispose off the suit parcels of land and this will cause irreparable damage. It is also one of the grounds that the parcels of land were illegally and or fraudulently transferred to the defendants and the defendants are likely to carry on with their malicious intentions of permanently disinheriting the plaintiffs and other legal beneficiaries of the suit parcels of land.

It is also their case, in seeking the orders set out above that, they have invested heavily on the suit parcels of land and they are likely to suffer irreparable damage if the orders sought herein are not granted.

Finally the applicants and other beneficiaries of the deceased have been and, are still living on the suit parcel of land and have no alternative place of livelihood or home.

The application is opposed and the defendants/respondents have filed replying affidavits whose contents I have noted. The learned counsel for the parties herein have also made their respective submissions which I have also noted.

It is important to note that, it is true that the said parcel of land allegedly belonging to the late Laban has already been subdivided and in the annexed replying affidavit sworn by the defendants copies of titles thereof have been annexed. That notwithstanding, it is the right of every party to be heard on merit in respect of the allegations presented in court.

For the plaintiffs to succeed in this application, they must show that they have a prima facie case with a probability of success and if such an order is not given they will suffer damage which may not be adequately compensated by an award of damages. If however, the court is in doubt, it will decide the matter on a balance of convenience.

I have carefully considered the pleadings herein and averments by the respective parties. The subject matter herein is land, and the plaintiffs aver that being the children of the deceased, they are entitled to what they believe belongs to the estate of their late father. On the other hand, the respondents state that they are the lawfully registered proprietors of the parcels of land subdivided following a power of attorney donated by the late Laban Njenga Mundia.

It is that power of attorney and the subsequent actions of the defendants that is being challenged by the plaintiffs. Those averments by both parties go to the root of the interest in the said parcels of land, and therefore, in my ruling amount to competing interests in land. If the said subject matter is not preserved, then it is obvious that the plaintiffs herein are likely to suffer loss that may not adequately be compensated by an award of damages.

There is another submission by the learned counsel for the plaintiffs that a living person cannot disinherit his intended beneficiaries and that is also a triable issue. Most of the submissions in the affidavits of the parties herein together with their advocates belong to the province of a full hearing and it may be prejudicial to the parties if I were to delve any deeper in respect thereof. Suffice to say at this stage, I am persuaded by the material before me that the plaintiffs have presented a prima facie case with probability of success and if the order is not given at this stage to preserve the property which is land, then the damage that may result may not adequately be compensated by an award of damages.

I am not in any doubt whatsoever about my findings herein above, but if I were to entertain any doubt, considering that the subject matter is land, then the balance of convenience will tilt in favour of the plaintiffs in that, the subject matter must be preserved until all parties are heard on merit. And therefore, in my ruling, the plaintiffs' application must succeed. Injunction orders shall issue in terms of prayers set out in the application, and in case of any doubt, these are to be found in prayers Nos. 2, 3, 4, 5, 6 and 7. Prayer No.8 cannot be issued at this stage until such time that the parties are heard and the matter finally

decided.

The costs of this application shall be in cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of September, 2009.

**A. MBOGHOLI MSAGHA**

**JUDGE**