



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Civil Case 60 of 2009**

**ROBERT MUEMA PETER & 3 OTHERS.....PLAINTIFF**

**VERSUS**

**GEOFFREY MUNG'URI.....DEFENDANT**

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**RULING**

Before court is the Chamber Summons dated 23<sup>rd</sup> February 2009 by which the Applicants seek inter alia the following orders:-

- “2     *THAT the Honourable court be pleased to issue an injunction to restrain the Defendant/Respondent either by himself or his authorized servants, agents and/or employees from trespassing into, selling, disposing of, subdividing, developing, charging, mortgaging and/or in any other way meddling with property known as Grant Number CR 13422, original numbers 146/2 and 146/3 pending the hearing and determination of the suit filed herewith.*
4.     *THAT costs of this application be provided for.”*

The property at the centre of this dispute is the parcel of land known as Grant No. CR.13422, Original Numbers 146/2 and 146/3 (hereinafter referred to as “*the suit property*”). The suit property Originally belonged to one MICHAEL ARTHUR EDGAR DOWLER. Upon his death on 30<sup>th</sup> November 2006 the deceased left behind a Will in which he appointed the Respondent GEOFFREY MUNG'ORI as the sole beneficiary and executor of his estate. The deceased had during his lifetime employed one MUTOKO MUASA KAMALA as his farm manager. The said Mutoko pre-deceased the deceased and upon his death the deceased permitted his widow VERONICA PETER MUASA and her children to remain on his property. Meanwhile the Respondent did apply for and obtained

letters of administration for the estate of the deceased Michael. The grant was confirmed on 22<sup>nd</sup> August 2008. The Plaintiffs/Applicants filed this suit on 2<sup>nd</sup> March 2009 seeking the following orders:-

- “(a) A declaration that both Plaintiffs and the Defendants are entitled, in equal shares to the suit property.
- (b) A permanent injunction restraining the Defendant from in any way dealing with the Plaintiff’s share of the suit property
- (c) An order directing the relevant Lands Office to issue the respective titles in favour of the Plaintiffs and the Defendant for their respective Shares.”

In the application now under consideration by this court the Applicants are seeking injunctive orders with respect to the suit property. The present application is brought under O. 36 r(1) (2) and 36D of the Civil Procedure Rules. O. 36D (2) requires that –

*“The summons shall be supported by an affidavit to which a certified Extract of the Title to the land in question has been annexed.”*

The Applicants have indeed annexed a true copy of the Certificate of Title to the suit property “RMP1”. In his written submissions counsel for the Respondent argues that the copy Title so annexed has been overtaken by events in that it bears the name of MICHAEL ARTHUR EDGAR DOWLER as the registered owner whilst the Respondent did transfer title for the suit property to himself upon obtaining confirmation of the Grant. Unfortunately the Respondent has not attached or annexed a copy of the Title in his own name thus this remains an unproven allegation. In the circumstances I am not in a position to make a definitive finding on this matter.

The Applicants have come to court seeking injunctive orders. The principles to be adhered to in granting such orders are now well established following the decision in the case of GIELLA –VS- CASSMAN BROWN [1973] E.A.L.R. 358. In that case it was held as follows:-

- “iv. An applicant must show a prima facie case with a probability of success
- (v) an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury
- (vi) when the court is in doubt, it will decide the application on the balance of convenience.”

I have carefully considered the submissions of learned counsel in this matter and I have perused the annexures thereto. I have also considered the circumstances of the case as well as the fact that this property was specifically bequeathed to the Respondent by the deceased owner. Whilst I do not wish to prejudge the main suit I am not convinced that the Plaintiffs have shown a prima facie case. As such I find that the present application has no merit and I hereby dismiss the same in its entirety. Costs in the cause.

Dated and Delivered at Mombasa this 18<sup>th</sup> day of November 2009.

**M. ODERO**

**JUDGE**

Read in open court in the presence of:

Mr. Sifuna for Applicant

Mr. Mwawasi holding brief for Defendant

**M. ODERO**

**JUDGE**

**18/11/2009**