



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISII

Civil Case 100 of 2009

JULIUS AKAMA MOKUA PLAINTIFF

VERSUS

GEORGE MORARA & 5 OTHERS DEFENDANTS

RULING

The plaintiff's application dated 5th June, 2009, prays for a temporary injunction to restrain the defendants, their agents, servants and/or employees from entering into, cultivating, occupying, trespassing upon or in any manner interfering with the parcel of land known as West Mugirango/Bogichora/121, hereinafter referred to as "**the suit land**", pending the hearing and determination of this suit. In his affidavit in support of the application the plaintiff deposed that sometimes in February and March 2009, the 1st to 5th defendants wrongfully and unlawfully entered the suit land and subdivided it and gave a portion of the same to the 1st defendant who has started putting up a semi permanent house thereon. The plaintiff reported the matter in Nyamira police station but was not given any assistance. The

plaintiff further lamented that the 1st defendant had destroyed his crops and was also harvesting his tea leaves. He urged the court to restrain him from continuing with any further act of trespasses. The plaintiff filed a supplementary affidavit and claimed that the suit land belonged to his deceased mother. He annexed thereto a copy of the official search. The same shows that **Kemunto Moku**a is the registered proprietor of the suit land. The plaintiff further stated that his mother died intestate on 14th December, 1984. Prior to filing this suit the plaintiff obtained letters of administration Ad Litem from this court.

The 1st defendant stated in his replying affidavit that the plaintiff herein is his biological father. He conceded that the suit land belonged to the late **Kemunto Moku**a, his grandmother. He added that the suit land was the only home known to him since his childhood and he is currently living there together with his wife and children. He said that both himself and the plaintiff and their respective family members were entitled to live on the suit land. In his view the rest of the defendants had wrongly been joined as defendants in this suit because all they did was to ensure that there was fairness in this dispute between the plaintiff and himself. He denied that he was intermeddling with the estate of his deceased grandmother and that he was destroying the plaintiff's crops and harvesting his tea bushes.

From the material on record there is no dispute that the suit land, measuring 4.8 hectares, is registered in the name of **Kemunto Moku**a who died on 14th December, 1984. No letters of administration were obtained by anyone in respect of the deceased's estate. There is also no dispute that the plaintiff herein is a son of the late Kemunto Moku

The 1st defendant stated in

his affidavit that although the plaintiff had referred to him as **George Morara**, his full name is **George Morara Akama** and is a son of the plaintiff. That was not denied by the plaintiff.

If indeed the 1st defendant is a son of the plaintiff and both of them have been living on the suit land all along it would be improper for this court to grant the orders sought by the plaintiff. What the plaintiff and the 1st defendant ought to do is to apply for letters of administration of the estates of **Kemunto Mokia** and thereafter proceed to subdivide the suit land among all the beneficiaries of the estate. I find no merits in this application and dismiss the same with costs to the 1st defendant.

DATED, SIGNED AND DELIVERED AT KISII THIS 8TH DAY OF DECEMBER, 2009.

**D. MUSINGA
JUDGE.**

8/12/2009

Before D. Musinga, J.

Mobisa - cc

Mr. Momanyi for the Plaintiff

N/A for the Defendant

Court: Ruling delivered in open court on 8th December, 2009.

**D. MUSINGA
JUDGE.**