



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT MERU

Civil Suit 124 of 2007

PATRICK GITONGA M'ITARU ..... 1<sup>ST</sup> PLAINTIFF

GEOFFREY MURIUNGI M'ITARU ..... 2<sup>ND</sup> PLAINTIFF

HENRY THIAURI M'ITARU ..... 3<sup>RD</sup> PLAINTIFF

GERALD KIRIMI M'ITARU ..... 4<sup>TH</sup> PLAINTIFF

VERSUS

JOEL MUTUMA M'ITARU .....DEFENDANT

RULING

The chamber summons dated 31<sup>st</sup> October 2007 was duly served upon the respondent who failed to attend the court or reply to it. In the result the application was argued *ex parte*.

The application seeks two substantive orders, namely, an injunction to restrain the respondent from interfering with or alienating or dealing with land parcel No. Ithima/Antuambui/2905 pending the determination of this application *inter partes*. It also seeks inhibition order to be registered against land No. Ithima/Antuambui/2905.

It is the applicants' case that they are sons of the deceased, M'Itaru Kaiyera, who was the registered proprietor of the suit land comprising 6.20 acres. That as a family they had agreed to sub-divide the suit land and distribute it equally amongst themselves.

They further contend that the respondent has fraudulently transferred the suit land to himself without filing any succession cause and is now in the process of transferring the same to third parties. The respondent has also threatened to evict the applicants from the land. The application is supported also by an affidavit sworn by the mother of the parties, Regina Mukomua M'Itaru to the effect that the respondent was entrusted by the family to pursue the legal process of succession but instead he transferred the land to himself.

I have considered the application and the annexures as well as submissions by counsel. It is now settled that an applicant seeking injunction must show a *prima facie* case with a probability of success. It is also trite that an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury. When the court is in doubt it will decide the application on the balance of convenience. See **Giella V. Cassman Brown & Co. Ltd** (1973) EA 358. The above conditions are sequential so that the second condition can only be addressed if the first one is satisfied and only when the court is in doubt will the third one can be addressed. See **Kenya Commercial Finance Co. Ltd V. Afraha Education Society** (2001) IEA 86. The applicants claim is that the suit land was registered in the name of their deceased father. They have not, however, annexed any documentary evidence to support this. The certificate of official search exhibited only confirms that the respondent is the registered proprietor of the suit land. It does not show how the property devolved. Secondly, their father, according to their own averment, died on 22<sup>nd</sup> May 1995, yet they have not taken out any grant of representation in respect of his estate including the suit land.

I come to the conclusion that, at this interlocutory stage, the applicants have not satisfied me that they have any registrable interest in the land in dispute. They have therefore failed to demonstrate that they have a *prima facie* case with a probability of success. In the result no useful purpose will be served in considering the other two conditions in the **Giella** case.

In a nutshell the application fails and is dismissed. Temporary orders of injunction and inhibition issued and 2<sup>nd</sup> October 2007 are vacated. I make no orders as to costs.

Dated and delivered at Meru this 1st day of February 2008.

**W. OUKO**

**JUDGE**