



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

MILIMANI LAW COURTS

Civil Case 331 of 2006

CHARLES NDUNGU NJONO.....PLAINTIFF

VERSUS

HARON NJONO NGURE.....1ST DEFENDANT

GITAU NJONO.....2ND DEFENDANT

MWANGI NJONO.....3RD DEFENDANT

BEATRICE MUMBUA NENE.....4TH DEFENDANT

RULING

By plaint dated 3rd April 2006 the plaintiff brought this claim against the defendant seeking judgment for:

- a) A permanent injunction restraining the 1st, 2nd and 3rd defendants, their agents or servants from selling or transferring the suit property being LT NO. BLOCK S 70 KARIOBANGI SOUTH PHASE IV to the 4th defendant or in any other manner dealing or interfering with the suit property.
- b) A declaration that the purported sale of the suit property by the 1st, 2nd and 3rd defendants to the 4th defendant is unlawful and null and void abinitio.
- c) In the alternative an order directing the 1st, 2nd and 3rd defendants to account to and give the plaintiff and other beneficiaries of the deceased's estate their fair share of the sale proceeds of the suit property.
- d) Costs of the suit.
- e) Any other or further relief that this Honourable Court may deem fit to grant in the circumstances of this suit.

Simultaneously with the plaint the plaintiff brought this Chamber Summons under certificate of urgency seeking a temporary injunction to restrain the defendants either by themselves or through their agents or servants from selling, transferring to the 4th defendant or in any other manner dealing or interfering with the suit property pending the hearing and determination of this suit.

The application is based on the ground: that the applicant and the 2nd respondent are co-administrators of the estate of the late NJONO KIGIRI KAGUNDA, that the 1st, 2nd and 3rd Defendants have entered into Sale Agreement with the 4th defendant purporting to sell the suit property to the 4th defendant secretly and without the knowledge of the plaintiff; that the 1st, 2nd and 3rd defendants have also purported to agree on the mode of sharing of the proceeds of the sale among themselves to the execution of the applicant and beneficiaries of the estate and that the 1st, 2nd and 3rd defendants are in the process of transferring the suit property to the 4th defendant and might do so in which event the applicant and other beneficiaries of the deceased's estate will suffer immense loss and damage unless the respondents are restrained by an order of this court. The application is also supported by an affidavit sworn by the applicant.

The applicant on 3rd April 2006 obtained ex parte interim injunction and served the respondents who filed replying affidavit in which they concede that the suit property forms part of their late fathers estate and they are all each entitled to equal share. But when the application came up for hearing interpartes they did not appear despite the fact that they were served and there is return of service on record. The applicant applied that the ex parte interim orders obtained on 3rd April 2006 be confirmed.

The applicant's application is granted and the ex parte injunction granted on 3rd April 2006 is hereby confirmed and to continue in force until this suit is heard and determined.

Dated and delivered at Nairobi this 31st day of October, 2006.

J.L.A. OSIEMO

JUDGE