

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 78 OF 2003

1.OMAR SAID AWADH.....1ST PLAINTIFF

2.FAHIMA SAID AWADH.....2ND PLAINTIFF

=V E R S U S=

MWANA SOODI BINTI SHAIBU WAMBWANA.....DEFENDANT

R U L I N G

The Plaintiff filed a Complaint alleging illegality in the dealing with Wakf properties in which they are beneficiaries. At the same time the Plaintiffs filed this application seeking interim orders restraining the Defendant from carrying out any dealings with the property or evicting the Plaintiffs pending the hearing of this suit.

The application is opposed by the Defendant who admits that the property is indeed Wakf property and she is the sole trustee. She further states that she sued other parties. Not the Plaintiffs in RMCC No.2361 of 2002 and there is an appeal pending in respect of that suit. There was some execution of the lower court order evicting the Plaintiffs from the property but that since 16/4/2003 the 1st Plaintiff has been residing in the property. The submissions of the Defendant has raised issue of limitation of the action, that the trust property is now under the second generation (the Defendant) while the Plaintiffs are of the third generation and can only benefit after the demise of the Defendant.

I have considered the submissions by both parties. It appears there are two suits in respect of the same trust property. On 11/7/2003 Hon. Commissioner of Assize Tutui found that the two suits are not similar or between the same parties. I agree with her ruling on the issue. It is to be noted that there is illegal transfer of trust property in the name of the Defendant and that she can easily dispose of the property thus extinguish the beneficial interest of the Plaintiffs. I find that the Plaintiffs have established a prima facie case.

All beneficiaries are entitled to enjoy and protect their trust property until the Wakf is dissolved under the Wakf Act. I therefore find that interim orders sought should be granted pending the hearing and determination of this dispute.

In the circumstances, I allow application and grant orders sought. Costs shall be in the cause.

Dated at Mombasa this 19th day of March, 2004.

JOYCE KHAMINWA

J U D G E

In the presence of :-

Mr. Khatib

Munyithia – H/B for Kilonzo.

JOYCE KHAMINWA, J.