



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1717 OF 2002

JANE MUTHONI KUHUNIZA & (2) OTHERS.....PLAINTIFF

VERSUS

JOSEPH FITUERE & (2) OTHERS.....DEFEDANT

RULING

This is the plaintiffs application for an order of injunction to restrain the defendants from interfering with or in any was disposing by way of transfer, sale, exchange or otherwise land titles no. Sigona/308 and 311 until the determination of the suit.

In the suit, plaintiffs seeks a declaratory order that, by reasons being children of first defendant, they are legally entitled to benefit from or inherit the first defendants wealth or estate.

The three plaintiffs are married daughters of the first defendant. The three plaintiffs live in their respective husband's homes. The second defendant is a son of first defendant and a brother to plaintiffs.

According to the 2nd defendant, first defendant has eight children; namely the three plaintiffs, two unmarried daughters and three sons. Further, according to the 2nd defendant; the first defendant has agreed to give his three sons and the two unmarried daughters respective shares of the land but he has refused to give any to each of the plaintiffs who are married.

The essence of the application is to restrain first defendant from giving gifts of his land to his children in his lifetime. The first defendant has an absolute and indefeasible title to his lands. There is no restrictions or conditions imposed on his title. He can in his lifetime give gifts inter vivos to any of his children as he pleases.

He cannot be forced by court or by anybody to act against his wishes.

The applicants have not disclosed any legal right or beneficial interest to the land.

They are claiming the land from their father merely on the ground that they are children of the first defendant. They cannot during the lifetime of their father force him to give them gifts of land inter vivos.

The order sought if granted will restrain first defendant from exercising his legal rights over his land. That is to say that if the order of injunction is granted it will, be against the law which gives first defendant absolute right to his land.

The application has no legal foundation. It is dismissed with costs.

E. M. Githinji

Judge

29.11.2002

11.30 a.m.

Jane Muthoni – 1st plaintiff absent Serah Wangari – her daughter holding brief.

Geoffrey Kamau

2nd defendant present 2nd defendant

I apply for certified copy of the Ruling

E. M. Githinji

JUDGE

Order: Ruling to be typed and supplied as prayed

E.M. Githinji

JUDGE