



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 350 OF 2017**

**JUDITH JUMA NYAGWETH** (Suing in her capacity as the Administrator

of the Estate of **JOHN OMONDI TINDO**)...**PLAINTIFF/RESPONDENT**

**VERSUS**

**BAKARI TEMBO**.....**1<sup>ST</sup> DEFENDANT/APPLICANT**

**NYAMAWI DZISWA**.....**2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

This application dated 16<sup>th</sup> March 2021 and is brought under Section 6, 1A, 1B, 3A and 63 (e) of the Civil Procedure Act Cap 21 of the laws of Kenya, 2010 and Order 51 of the Civil Procedure Rules and all the enabling provisions of the Law seeking the following orders;

1. That this honourable court be pleased to certify this application as urgent.
2. That this honourable court be pleased to stay this suit pending hearing and determination of the Court of Appeal, Civil Appeal No. 126 of 2019 Mombasa.
3. That cost of this application be provided for.

It is based on the grounds that there is a pending appeal at the Mombasa Court of Appeal being Civil Appeal No. 12 of 2019 over the subject matter of this being suit property Plot No. MN/II/3166, which is a section of the main undivided parcel of land. That the purported description by the plaintiff of the suit property being Plot No. MN/II/3166 accordingly refers to the undivided section of the parcel of land where the plaintiffs resides as well the Court of Appeal Judges issued an injunction order pending hearing and determination of the appeal as above described. That a ruling was entered with respect to the suit property on 7<sup>th</sup> February 2020 by a three (3) Judges of the Court of Appeal namely Honourable D. K. Musinga, Gatembu Kairu, FCI Arb, A. K. Murgor delivered at Mombasa in Civil Application No. 73 of 2019 (Mombasa Court of Appeal). That the Court of Appeal judges placed an injunction against the 4<sup>th</sup> respondent Saleh Mohamed Ramzam Noormohamed from evicting the applicants and those persons claiming under them from the suit properties. That the defendants herein have been staying in the suit property since 2013 having been authorized to stay by Juma Mdui one of the applicants in the Civil Appeal Case No. 126 of 2019 and the injunction extends to protect them. That Section 6 of the Civil Procedure Act Cap 21 of the Laws of Kenya stops this court from proceeding with this suit of which parties are litigating under the same title. That the applicants' constitutional rights enshrined under Article 50 of the Constitution 2010 stand infringed if orders craved are not granted..

The respondent submitted that she is the administrator to the estate of one John Omondi Tindo, who is her late husband. ("JJN-1" is the photocopy of the certificate of confirmation of Grant dated 25<sup>th</sup> February, 2010). That her late husband John Omondi Tindo, is the registered owner of the suit property being Plot No. MN/II/3166 which said parcel of land her late husband bought from one Salehmohamed Ramzan Noormohamed on the 8<sup>th</sup> September, 1987 for a sum of Kshs.40,000 (Forty Thousand). She annexed the sale agreement and the general map showing PLOT NO. 3166/II/MN and PLOT NO. 4183/II/MN and PLOT NO. 4182/II/MN). That the defendants have encroached in the suit land without the permission and/or authority of the administrator of the estate of John Omondi Tindo. ("JJN-3" is the surveyor's report and the map showing the extent of the defendant's encroachment to the suit property). That due to the defendants' activities, she has been forced to approach the Honourable Court for assistance to have the defendants evicted from the suit property so that she and the other heirs or her late husband John Omondi Tindo, can have quiet possession of the suit property. That she is a stranger to the Civil Application No. 73 of 2019 (UR 58/19) as she has never been a party to the said suit as a defendant. That she is also a stranger to the Civil Appeal No. 126 of 2019 as she is not a party to the said appeal and she does not know the substance of the said appeal, and its relationship with the current suit. That the current suit concerns PLOT NO MN/II/3166 which said parcel of land forms part of the estate of John Omondi Tindo as the registered proprietor having purchased the land on the 8<sup>th</sup> September 1987 and the parcel of land transferred to the late John Omondi Tindo as the owner and proprietor. That the current suit, should run its cause as the parcel of land now forms part of the estate of John Omondi Tindo.

This court has carefully considered the application and the submissions therein. The applicants stated that there is a pending appeal at the Mombasa Court of Appeal being Civil Appeal No. 12 of 2019 over the subject matter of this being suit property Plot No. MN/II/3166, which is a section of the main undivided parcel of land. I have perused the documents annexed to the applicants' application and find that the plots affected by the Court of Appeal ruling and which the injunctive orders apply to relates to PLOT NO. 1482/II/MN and PLOT NO. 1483/II/MN both originally known as PLOT NO. 344/II/MN. From the annexure filed on the 5<sup>th</sup> October 2021, it is clear that PLOT NO. 1482/II/MN and PLOT NO.1483/II/MN both originally known as PLOT NO. 344/II/MN, and the current suit property being PLOT NO. 3166/II/MN is a subdivision of PLOT NO. 1483/II/MN. I find that it is only fair and just that this matter be stayed as there is an existing injunction on the suit land. For these reasons I find that this application is merited and I grant the prayer 2. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26<sup>TH</sup> OCTOBER, 2021**

**N.A. MATHEKA**

**JUDGE**