



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**MISC. APPLICATION CASE NO. 16 OF 2017**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE REGISTRAR OF TITLES.....1<sup>ST</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION.....2<sup>ND</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR.....3<sup>RD</sup> RESPONDENT**

**AND**

**MOHAMED HASSAN MWARUMBA.....:EX-PARTE APPLICANT**

**ABUBAKAR KAIM ABDALLA.....1<sup>ST</sup> INTERESTED PARTY**

**ABASS MUHAMED MBARAK.....2<sup>ND</sup> INTERESTED PARTY**

**ALI BOA SHALLO.....3<sup>RD</sup> INTERESTED PARTY**

**TAWKELL SAID MOHAMED.....4<sup>TH</sup> INTERESTED PARTY**

**RULING**

This application dated 28<sup>th</sup> January 2021 and is brought under Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya; under Order 24 Rule 4(1)(2) and 5, and Order 51 of the Civil Procedure Rules seeking the following orders;

1. THAT Service of this application be dispensed with in the first instance owing to the urgency involved.
2. THAT this Honourable Court be pleased to substitute the Ex parte Applicant herein Mohamed Hassan Mwarumba (Now Deceased) with Sofia Abdalla Mugute and Hassan Mohammed (the legal personal representatives of the deceased), to be allowed to join this suit on behalf of the deceased Ex parte Applicant and to continue with executing the same.
3. THAT pending the hearing and determination of this application inter parties, this Honourable Court be pleased to issue an order of temporary injunction, restraining the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, whether by themselves, their agents, employees, servants or any person acting at their behest, from selling, disposing off, alienating, or in any other manner interfering with the suit property; Subdivision No. 313/II/MN Utange pending the hearing and determination of the suit herein.
4. THAT pending the hearing and determination of this application inter-parties, this Honourable Court be pleased to issue an order of temporary injunction, restraining the 1<sup>st</sup> and 2<sup>nd</sup> Interested parties, whether by themselves, their agents, employees, servants or any person acting at their behest, from threatening, selling, disposing off, alienating, or in any other manner interfering with the suit property; Subdivision No. 313/II/MN Utange pending the hearing and determination of the suit herein.

5. THAT an injunction do issue against the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties by themselves, their servants, and/or agents or otherwise howsoever be restrained from interfering with the suit properties pending the hearing and determination of this suit.

6. THAT this Application be heard inter-parties on such date and at such time as this Honourable Court may direct.

7. That costs of this application be provided for.

The respondents/interested parties submitted that the 1<sup>st</sup> Interested Party is the son of the late Mohamed Mbarak (deceased) who owned 1/3 undivided shares in the property 7 known as PLOT 313/II/MN. Annexed herein and produced as evidence is a true copy of the postal search dated 20th February 2019 AMM- 1. That upon the death of his father, Mohamed Mbarak on 28<sup>th</sup> December 2002 at Mji wa Kale in Mombasa County, he petitioned the Court for letters of administration intestate. The same was gazette on the 22<sup>nd</sup> February 2013 and Certificate of Confirmation of Grant was issued on 27<sup>th</sup> February 2014. Annexed and produced as an exhibit are true copies of Kenya gazette dated 22<sup>nd</sup> February 2013 and the Certificate of confirmation of Grant dated 27<sup>th</sup> February 2014 marked AMM-2 and AMM-3 respectively. That his late father bought his 1/3 share of the suit property from one Abdalla Ahmed Qahtan sometime in October 1962 for a consideration Kshs. 1500 and had the same registered on the copy of the Title. Annexed herein and produced as the exhibit is the true copy of the title marked as AMM-4. That they have been always aware that one Hassan Rajab(deceased) bought the 1/3 shares of the suite property held by Saleh bin Abdalla, Munira bind Abdalla, and Ngombeni bind Abdalla hence becoming the holder of the third shares even though he was not registered on the said title. It is a fabricated lie for the exparte to claim that they are threatening the estate of the deceased by wanting to dispose off suit property: that their dealing with the estate have always been open and above board safeguarding the interest of all beneficiaries even when his late father was alive he always consulted the family of the late Hassan Rajab (deceased) through elder son Rajab Hassan (deceased) and the Public Trustees were they had file their case. That it is not true that his late father and Kaim Abdalla Kaim had sold their 1/3 shares to his late father. One of the beneficiaries .of the estate of Hassan Rajab and elder brother to the Exparte applicant, one Rajab Hassan both (deceased) wrote to the Public Trustee on the 30<sup>th</sup> November 1990 confirming that their late father had only 1/3 shares of the suit property and had no objection of his father's future intention of subdividing of the suit property. This is indicated on their deceased father's application to the land control board. Annexed herein and produced exhibit is a true copy of the letter dated 30<sup>th</sup> November 1990 and the application by Ex-parte applicant's father application to the land control board and marked as AMM-6A, 6B and 6C. That the said Grant of letters of administration dated 19<sup>th</sup> September 2013 in High Court Succession Cause No. 343 of 2011 relied on by the Ex-parte applicant is fatally defective as the same has been revoked and the file closed. As such the Ex-parte applicant has no locus standi to file this suit. Annexed and produced as the exhibit are true copies of the letters to the Deputy Registrar of the High Court dated 21<sup>st</sup> March 2018 and the Deputy registrar's response marked as AMM-7A and AMM-7B respectively. That in the year 2010 we were informed that part of suit property had been sold off a building had been erected on the plot. They confirmed that the building was a school by the name of Elimu ya Kenya and upon following up we were informed that someone by the name Nyerere had sold them that piece of land. They later found out that Nyerere was an alias of Mohamed Hassan Mwarumba (Ex-Parte Applicant herein).

This court has considered the application and submissions therein. The applicants seek to substitute the ex-parte applicant who is deceased. They annexed the limited grants of letters of administration of the estate of the ex parte applicant one Mohammed Hassan Mwarumba. The respondent opposed the application stating that the said Grant of letters of administration dated 19<sup>th</sup> September 2013 in High Court Succession Cause No. 343 of 2011 relied on by the Ex-parte applicant is fatally defective as the same has been revoked and the file closed. As such the Ex-parte applicant has no locus standi to file this suit. Annexed and produced as the exhibit are true copies of the letters to the Deputy Registrar of the High Court dated 21<sup>st</sup> March 2018 and the Deputy registrar's response marked as AMM-7A and AMM-7B respectively. I have perused the court record in great detail and indeed find that this matter was initially filed in court by the ex parte applicant one Mohammed Hassan Mwarumba now deceased on 21<sup>st</sup> December 2017. The Deputy registrar's response marked AMM-7B clearly stated that Grant of letters of administration dated 19<sup>th</sup> September 2013 in High Court Succession Cause No. 343 of 2011 relied on by the Ex-parte applicant Mohammed Hassan Mwarumba were revoked and the file closed on 28<sup>th</sup> July 2017. This means then that the Ex-parte applicant had no locus to file this suit. This means the applicants in this case Sophia Abdalla Mugute and Hassan Mohamed (being the wife and son of the deceased Mohammed Hassan Mwarumba) cannot now substitute a party which had no locus in the first place. I find this application is not merited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 7<sup>TH</sup> DECEMBER 2021.**

**N.A. MATHEKA**

**JUDGE**