



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**ELC CASE NO. 171 OF 2016**

**GEORGE NKUNJA**

**M'NCHEBERE.....PLAINTIFF**

**VERSUS**

**BERNARD KIREMA NTHOITHA (SUED ON BEHALF OF GRACE THIRINDI NTOITHA – DECEASED)...DEFENDANT**

**RULING**

1. The Notice of Motion dated 20th September, 2016 seeks the following orders:-

1. THAT the Honourable Court be pleased to issue temporary orders of injunction restraining the defendant whether by himself, his family members, relatives, assigns, agents and/or any other person working under his instructions from burring the remains of GRACE THIRINDI NTOITHA (deceased) on land parcel number A/KIONGO/14505 Adjudication section pending hearing and determination of this application inter-parties.
2. THAT the Honourable Court be pleased to issue temporary orders of injunction restraining the defendant whether by himself, his family members, relatives, assigns, agents and/or any other person working under his instructions from burring the remains of GRACE THIRINDI NTOITHA (deceased) on land parcel number A/KIONGO/14505 Adjudication section pending hearing and determination of the suit.
3. THAT the orders be served upon OCS Laare police station for enforcement.
4. THAT cost of this application be provided for.

2. Grounds in support of the application are:-

1. THAT on/or about 04/04/2016 the Plaintiff and GRACE THIRINDI NTOITHA (deceased) entered into an exchange of land agreement whereof the plaintiff took the said deceased's land parcel number A/KIONGO/14505 Adjudication section and he gave the said deceased his land parcel number A/KIONGO/9276.
2. THAT immediately upon the execution and signing the said agreement the said deceased acknowledged additional fees sum of Kshs. 50,000/= for the developments thereon.
3. THAT the plaintiff took actual possession of the deceased land and embarked on fencing and pruning all the Miraa growing thereon and erected a live fence.

4. THAT the defendant secretly without the knowledge of his deceased mother fraudulently working in collusion with land adjudication officer caused the suit land to be changed and registered in his names thus depriving the plaintiff thereon.

5. THAT the deceased later came to learn of the fraud and reported the matter to police the case which is still pending for investigations.

6. THAT the defendants' actions are illegal, unless restrained the plaintiff shall suffer irreparable loss and damages.

3. The application is further supported by the Affidavit of GEORGE NKUNJA M'NCHEBERE who has deponed as follows:-

1. THAT I am the owner of land parcel number 14504 and 14505/KIONGO Adjudication section. See booklet marked GNN1.

2. THAT vide sale of land agreement dated 04/04/2016, GRACE THIRINDI NTOITHA (deceased) and I entered into a exchange of land agreement whereof the said deceased gave to me land parcel number 14505/A/KIONGO Adjudication section measuring 0.11 acres in exchange of her land parcel number 9276/A/KIONGO Adjudication section. See a copy of agreement marked as GNN2.

3. THAT upon signing and execution of the said agreement the said deceased acknowledged sum of Kshs. 50,000 as an additional fees in respect of the said land for her developments thereon.

4. THAT immediately upon payment he took actual possession of the said land and erected live fence thereon.

5. THAT unknown to the said deceased and me the defendant fraudulently working with collusion with adjudication officer caused the deceased land to be changed and registered in his name.

6. THAT the said deceased came to learn of the fraud and reported the matter to police the case which is still pending for determination and investigations. See CID letter marked GNN3.

7. THAT when I visited the land office I was surprised to learn that my name was canceled despite the said land having been transferred to me. See a copy of the booklet marked GNN4.

8. THAT on/or about 06/09/2016 the defendant herein without any justification and/or colours of right threatened to bury the remains of his mother GRACE THIRINDI NTOITHA (deceased) on my land.

9. THAT the defendant actions are illegal unless restrained I stand to suffer irreparable loss and damages.

4. The application was initially taken to court on 22/9/2016 whereby applicant had obtained interim orders against the Respondent restraining the Respondent from interring the remains of GRACE THIRINDI on land parcel No.A/KIONGO/ 14505.

5. When the matter came before me on 9/3/2017, applicant stated that service had been effected. No response has been filed. Perhaps burial has taken place elsewhere. Never the less, the present application is unopposed. I hence proceed to grant the temporary orders of injunction in terms of prayer 3 & 4 of the application for a period of 8 months.

**DELIVERED IN OPEN COURT AT MERU THIS 5TH DAY OF APRIL, 2017 IN PRESENCE OF:-**

C:A Janet

Muthamia h/b for Kiogora

Mugambi for Plaintiff.

**L.N. MBUGUA**

**JUDGE**