



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 52 OF 2014

SAMSON KUBAI.....PLAINTIFF

STANLEY MWARI.....PLAINTIFF

VERSUS

MARION GACHERI (BEING THE LEGAL REPRESENTATIVE OF THE ESTATE OF
M'IBUURI M'IKANDI.....DEFENDANT

R U L I N G

The apposite Notice of Preliminary objection dated 24.4.2014 has the following grounds:

1. *THAT the plaintiffs have no locus standi whatsoever to file this suit and the same court be struck out on the point of law.*
2. *THAT the plaintiff's claim herein offends the maxim of quic quid plantatur solo solo sedit: that one cannot claim to have legal property on the land of another who has a good title and proprietary rights.*
3. *That the plaintiffs are intermeddlers in respect of the suit land and pending before the succession court is an application for injunction against intermeddling in SUCC. CASE NO. 64 of 2008 in the estate of the late M'IBURI MIKANDI.*
4. *THAT the plaintiffs have no legal right to bring this suit before court as it is not a registered entity and the plaintiffs are self seekers for their own selfish interests.*
5. *THAT the suit is malicious, vexatious frivolous and a total abuse of the court process AND the defendant prays that the suit be struck out with costs.*

The plaintiffs and the defendant filed written submissions. I have carefully examined the parties' submissions. I have also considered the authorities they have proffered. After giving this matter careful consideration, I wish to be guided by the case of Mbuthia versus Jimba (credit corporation [1988] KLR1) which eruditely handled the area of Interlocutory Matters although it was specifically dealing with the area of injunctions. The Court of Appeal opined as follows:

“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather, to weigh up the relevant strength of each side's propositions. The lower court judge in this case had given far beyond his proper duties and made final findings of fact on disputed affidavits.”

It has been pontificated that this approach is a veritably apt guide when courts are dealing with interlocutory matters where facts need further proof. I offer my respectful obeisance to this view. Hence the ex-tempore nature of this ruling.

I find that grounds 1, 2, 3, 4 and 5 of the Notice of Preliminary Objection do not raise pure points of law as they invite arguments and the necessity for proof of the assertions postulated therein.

In the circumstances, I find it necessary to dismiss this P. O.

Costs shall be in the cause.

Delivered in Open Court at Meru this 19th day of October, 2015 in the presence of:

Cc. Daniel/Lilian

Muthamia for Respondent

Mutembei h/b Kiome for Applicant

P. M. NJOROGE

JUDGE