



**REPUBLIC OF KENYA**

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

**LAND & ENVIRONMENT NO: 57 OF 2013**

**SELIPHA JADEYA KINADIRA.....1<sup>ST</sup> APPLICANT**

**BEATRICE KAVULANI KINADIRA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**EPAINITO KIMIYA KINADIRA.....1<sup>ST</sup> RESPONDENT**

**EPAINITUS ENDECHI LUVITA.....2<sup>ND</sup> RESPONDENT**

**RULING**

The plaintiffs in their plaint dated 15/2/2013 are seeking orders of injunction against the defendants in relation to plot number **KAKAMEGA/BUGONDA/1213**. They also seek to be declared the proprietors of the suit land. The defendants filed a notice of preliminary objection to the plaintiff's suit.

Mr. Musiega counsel for the defendants/applicants contend that plaintiffs lack locus standi to litigate over the suit land as it belongs to a deceased person. The court lacks jurisdiction to entertain the suit as the remedies being sought are not available. The suit is an abuse of the court process. The applicants did not obtain letters of administration before filing the suit and are therefore not the legal representatives of the deceased owner of the suit land counsel relies on the case of **WILLIE VS MUCHUKU & 2 OTHERS (2002) 2 KLR 357**. It is further contended that the plaintiff's prayer to be declared as the proprietors of the suit land cannot be granted as the land belongs to a deceased person.

Mr. Wekesa, Counsel for the plaintiff's maintain that the defendants unlawfully transferred the land to the 1<sup>st</sup> defendant in 2011 before succession was done. The land belonged to the plaintiff's father who died in 1988. The plaintiffs reside on the suit land allowing the preliminary objection would be tantamount to sanctioning the unlawful acts of the defendants. The pleadings herein show that the parties are relatives in the defence, it is contended that he 1<sup>st</sup> defendant was the recognized and registered owner of the suit land. The official search dated 4/2/2013 shows that the land was transferred to the 1<sup>st</sup> defendant on 23/8/2011. The plaintiffs maintain that the land belonged to their father who died in 1988. The 1<sup>st</sup> defendant does not explain how he got registered as the proprietor of the suit land. Given the pleadings herein, it is clear to me that the 1<sup>st</sup> defendant has a duty to explain how the land was transferred to him with succession proceedings as contested by the plaintiff's. The plaintiff maintains that they live on the suit property. They are entitled to seek injunctive orders against the defendant. Since the land is not currently registered in the names of the deceased, I do find that the plaintiffs have the locus standi to seek cancellation of the defendant's title. Thereafter, in the event that they are successful, then the land can revert to the names of the deceased and succession proceedings can commence.

I do find that the objection herein is not one that will settle the parties dispute.

In the end , I do find that the preliminary objection is not merited and the same is dismissed with costs.

Dated, delivered and signed at Kakamega this 16<sup>th</sup> day of September 2014

**SAID J. CHITEMBWE**

**JUDGE**