



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NO. 266 OF 2011

BEN NJOROGE MUCHUNU.....1ST PLAINTIFF

SIMON KIMANI MUCHUNU.....2ND PLAINTIFF

STEVE NDUNGU MUCHUNU.....3RD PLAINTIFF

VERSUS

PHARES MUCHUNU.....DEFENDANT

AND

MARGARET WANGARE MBURU (*on her own and as the next friend of*

HARUN MBURU).....1ST INTERESTED PARTY/APPLICANT

PENINAH WANGUI.....2ND INTERESTED PARTY/APPLICANT

RULING

In their application dated 15.02.2013 the Interested Parties (*Applicants*) sought an order of temporary injunction to restrain both the Plaintiffs and Defendants (*who are respondents in the application*) from distributing a sum of Ksh 5 million, the proceeds of sale of an estate property of the late Benjamin Njoroge Wamanja who is said to have died in the year 1993. The said sum of money is held in a deposit account in the names of the Plaintiffs' and Defendants' Affidavit.

Under the principles set out in the case of **GIELLA VS. CASSMAN BROWN & CO. LTD [1973] E.A. 445**, an Applicant for an order of injunction should show that -

(a) *he has a prima facie case with a probability of success,*

(b) *unless the order of injunction is granted, he will suffer substantial loss which he will not be compensated in damages,*

(c) *in the event of doubt on the first two principles, then the court will determine the application on the balance of convenience.*

From the pleadings, it is shown that the estate property in issue was sold for shs 11 million. It is also shown in the Applicant's Supporting Affidavit that a sum of sh 6 million has already been distributed, some of the estate's beneficiaries. A sum of Ksh 5 million is said to be in a deposit account with the

Plaintiffs' and Defendant's Advocates as already stated above.

There are merely grounds of opposition to the Interested Parties' application. There is no affidavit to rebut the Interested Parties' claim that they too are entitled to an equal amount of the proceeds of sale of the estate property of the late Benjamin Njoroge Wamanja. It is not at this stage necessary to examine the validity of that claim. It suffices to observe that there is no objection or denial to the basis of the Applicant's claim, the deceased was their grandfather; and that they too are entitled to part of his estate. The basis of such interest would be a matter of full argument and evidence.

In the circumstances I am satisfied that the applicants have established a prima facie case with a probability of success and that there is every likelihood that if the temporary injunction is denied, the Interested Parties are likely to suffer loss and damage which neither the Plaintiffs nor the Defendant would be keen to compensate either of them.

For those reasons, I would allow the Chamber Summons dated 15.02.2013 in terms of prayer iv thereof. The costs herein shall be in the cause.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 7th day of November, 2013

M. J. ANYARA EMUKULE

JUDGE