



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

Miscellaneous Application 142 of 2012

NOAH MOLOYIAN NOAH(person of un-sound suing through his wife and next friend
ELIZABETH MOLOYIAN NOAH **APPLICANT**

VERSUS

THE DISTRICT LAND REGISTRAR,
KAJIADO DISTRICT LAND REGISTRY **RESPONDENT**

R U L I N G

Before me is an application by way of Notice of Motion dated 18th July 2012 filed by Noah Molyian Noah suing through his wife and next friend Elizabeth Molyian Noah. The respondent is the District Land Registrar, Kajiado. The application was filed under section 3 of the Civil Procedure Act (Cap 21). The prayers in the application are as follows:-

- 1. THAT this application be certified as urgent and be heard ex parte in the first instance.**
- 2. THAT this Honourable Court be pleased to order the Respondent herein, the District Land Registrar, Kajiado District Land Registry, to issue the applicant with certified copies of the green card for land parcel number Kajiado/Kitengela/2005 and/or current certificate of official search and/or copies of green cards and/or certificates of official search for any resultant parcels of land as a result of any subdivision of land parcel number Kajiado/Kitengela/2005.**
- 3. THAT this Honourable Court be pleased to order the District Land Registrar, Kajiado District Land Registry, to dispense with the requirement for production of a copy of the Title Deeds for land parcel number Kajiado/Kitengela/2005 and/or for any resultant parcels of land as a result of any subdivision of parcel number Kajiado/Kitengela/2005 and/or to dispense with any other restrictions in conduction (sic) a search.**
- 4. THAT costs of the application be provided for.**

The application has grounds on the face of the Notice of Motion. The grounds are that the applicant and Erick Tampene Nkote, and Setian Ene Rukita are the children of the late Nkote Mutunkei who passed away on 25th May 2005 and therefore beneficiaries to the estate. That in 2011, the three agreed to commence succession proceedings to distribute the estate. That Erick Tampene who was in charge did not file the court case and engaged in suspicious dealings and was trying to subdivide and distribute the land without the Grant of Letters of Administration. That the applicant had through his advocate tried to conduct official searches on the subject land in vain. That the respondent had blocked the applicant from

obtaining copies of the green card or search by insisting that the applicant must first produce a copy of the original Title Deed.

The application was filed with an affidavit sworn by the applicant on 18th June 2012. The affidavit annexes some documents and letters relating to the subject land, including copy of the certificate of death of Nkote Mutunkei.

At the hearing of the application, I was shown a document which had a rubber stamp indicating that the application was served on the District Land Registrar Kajiado. However, no response was filed by the District Land Registrar (the respondent). The said Registrar was also not represented on the hearing date.

The prayers in the application relate to availing information to the public. The applicant is a member of the public. The information is in the hands of the State. Article 35 of the Constitution provides for the rights of every citizen to access information held by the State. The State and by inference State or public officers have a duty to provide access to such information by citizens. The respondent has not come to court to give any reasons why the applicant cannot be availed the information which he requires. There is therefore no reason to deny the applicant the request for access to the information. I find merits in the application. I will allow the same.

Consequently, I allow the application and grant prayers 2 and 3. Costs in the cause.

Dated and delivered at Machakos this 4th day of **October** 2012.

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George Dulu

Judge

In the presence of:

E.K. Getonya h/b for Mr Ngugi for the Applicant

N/A for Respondent

Court clerk: - Nyalo