



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**PET NO. 19 OF 2019**

**JOHNSON MWERO & 5 OTHERS.....PLAINITFFS**

**VERSUS**

**THE OFFICE OF THE PUBLIC TRUSTEE & 2 OTHERS.....DEFENDANTS**

**RULING**

***(Application seeking orders of injunction; petitioners claiming to be beneficiaries of suit land and alleging interference from the 2<sup>nd</sup> respondent; no response filed by 2<sup>nd</sup> respondent; application allowed; second application by some persons seeking to be enjoined as interested parties; applicants also claiming to be beneficiaries of the suit land; application allowed)***

1. This suit was commenced through a Constitutional Petition claiming a contravention of various rights enshrined in the Constitution including the right to own property under Article 40. The petitioners are sons and daughters of the late Peter Johnson Mwero and Elizabeth Johnson Mwero who were registered as proprietors of the land parcel Kwale/Mwavumbo/46 later subdivided into Kwale/Mwavumbo/179. It is averred that the 1<sup>st</sup> respondent, the Public Trustee, was appointed on 28 May 2007 to administer the estate of the deceased together with the interested party. The petitioners aver that on 1 May 2019, they discovered a group of unknown persons having unlawfully entered the suit land and commenced some excavation and developments. It is pleaded that the interested party has denied having given consent to the said developments. It is contended that the petitioners sought assistance from the 1<sup>st</sup> respondent who ignored them and failed to intervene hence rendering this petition necessary. The petitioners state that they later discovered that it is the 2<sup>nd</sup> respondent who is undertaking the developments. In the suit, they want the 2<sup>nd</sup> respondent permanently restrained from the land alongside various declarations regarding their rights over the suit property.

2. Together with the petition, the petitioners filed an application for an injunction to restrain the 2<sup>nd</sup> respondent from interfering with the suit land, making any developments, or dealing with it. While that application was pending, an application dated 1 October 2019 was filed by two persons, namely Simon Ndegwa Mwero and Victoria Mzije Johnson Mkala. In the application, they have sought leave to come into this suit as 2<sup>nd</sup> and 3<sup>rd</sup> interested parties. They claim to be beneficiaries of the estate of the late Johnson Mkala Mwero and Elizabeth Johnson Mwero. Each has sworn an affidavit to support their application to be allowed in this suit as interested party. Simon Ndegwa Mwero has deposed that he is one of the beneficiaries of the late Johnson Mkala Mwero and the late Elizabeth Johnson Mwero, whose estates are the subject of proceedings in Mombasa Succession Causes No. 27 of 1987 and 82 of 2003 respectively. He has averred that he is their biological son. He has deposed that this petition was commenced without him being informed or consulted. He believes that the petition is aimed at disinheriting him in particular. He has further stated that he has certain information that will shed light on the ownership of the substratum of the suit. He has also accused the petitioners and the interested party of intermeddling in the estate of the deceased. More or less similar depositions were made by Victoria Mzije Johnson Mwero in her supporting affidavit where she has averred that she is daughter of the deceased.

3. On the first application, that is of injunction, this is primarily aimed at the 2<sup>nd</sup> respondent. He has not filed anything to oppose the motion. So that status quo may be maintained, I will allow the application for injunction and order that the 2<sup>nd</sup> respondent should not make any developments or any structures on the suit property, or enter into any dispositions, pending the hearing and determination of this suit. I award the costs of the application to the petitioners as against the 2<sup>nd</sup> respondent.

4. On the application for joinder as interested parties, the petitioners do not oppose the same. I therefore allow the said application and the two persons are enjoined as 2<sup>nd</sup> and 3<sup>rd</sup> interested parties. There will be no orders as to costs on this application for joinder.

5. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 13<sup>th</sup> day of November 2019.**

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**MUNYAO SILA,**

**JUDGE.**

**IN THE PRESENCE OF:**

Ms. Olouch Wambi for the petitioners/applicants.

Mr Makuto holding brief fro Mr Maliro for the 1<sup>st</sup> & 3<sup>rd</sup> respondents.

Mr. Chebukaka holding brief for Mr Opolu for the interested party.

Mr. Wampy present for the 2<sup>nd</sup> & 3<sup>rd</sup> intended interested parties/applicants.

Court assistant; David Koitamet.