



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO. 160 OF 2015

SIDI MSANZU.....1ST PLAINTIFF

MWENDA KITSAO.....2ND PLAINTIFF

LOISE NYEVU NGONYO.....3RD PLAINTIFF

EUNICE NGONYO MAINGE (*as the administrators or the Estate of*
NGONYO MAINGE KIPONDA).....4TH PLAINTIFF

VERSUS

MWALIMU NGONYO.....1ST DEFENDANT

SAFARI NGONYO.....2ND DEFENDANT

KARISA NGONYO.....3RD DEFENDANT

RULING

1. In the Application dated 16th September, 2015, the Plaintiffs are seeking for the following orders:

a. That an interlocutory injunction do issue restraining the Defendants/Respondents their servants, employees and/or agents, or any other party from otherwise transferring, conveying and/or selling and/or interfering with the peaceful enjoyment of all that property known as Kilifi/Mtondia/209 pending the hearing and determination of this suit.

b. That costs of the Application be provided for.

2. The Application is premised on the grounds that the Plaintiffs are the administrators of the Estate of Ngonyo Mainge Kiponda (*deceased*); that the Plaintiffs are the daughters of the deceased while the Defendants are the sons of the deceased and that the Defendants have sold the suit property to third parties without following due process.

3. The Applicants deponed that as a family, they are aggrieved by the Defendants' move of selling the suit property which is registered in their father's name.

4. In his Replying Affidavit, the 1st Defendant deponed that their late father had four wives; that it is the Applicants who have made it impossible for the succession proceedings to be completed so that each wife

can get her rightful share of the Estate of the deceased and that the main issue is about the sub-division of the suit property.

5. Neither the Plaintiffs nor the Defendants filed submissions.

6. From the pleadings before me, it is not in dispute that the suit property is registered in favour of the late Ngonyo Mainge Kiponda.

7. Both the Plaintiffs and the Defendants are children of the deceased. The Interested Parties are the wives of the deceased.

8. It is trite that under Section 82 of the Law of Succession Act, no person can intermeddle with the Estate of a deceased person unless and until the Grant of Letters of Administration have been obtained and confirmed.

9. In the circumstances, the parties in this suit should file the pleadings in the High Court for the purpose of obtaining the Grant for Letters of Administration and then have them confirmed, before they can deal with the suit property.

10. It is only after the High Court has finalized the process of distributing the Estate of the deceased that the parties herein can deal with the suit property in line with the orders of the High Court.

11. In the meantime, the *status quo* prevailing should be maintained.

12. For those reasons, I make the following specific orders:

a. The prevailing status quo in respect of parcel of land known as Kilifi/Mtondia/209 to be maintained, meaning that no one should sell, transfer, alienate or convey the said land pending the hearing of this suit or further orders of this court or the High Court.

b. That costs of the Application to be in the cause.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE