



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 272 OF 2016

**ABDISALAN GULLA HAMED (Suing as the Administrator of the Estate of
GULIA MOHAMMED ABDI (Deceased).....PLAINTIFF**

VERSUS

DANIEL NGARUTHI KANAMPIU.....DEFENDANT

RULING

1. The Notice of Motion dated 9th December, 2016 seeks orders:-

(1) Spent

(2) THAT a temporary injunction do issue restraining the Defendant , by himself, his agents, servants from transferring, leasing, charging, selling the Plaintiff's unsurveyed parcel of Land measuring 2 ½ Acres situated at Maili Tatu in Isiolo pending the hearing and determination of this application.

(3) THAT a temporary injunction do issue restraining the Defendant, by himself, his agents, servants from transferring, leasing, charging, selling the Plaintiff's unsurveyed parcel of Land measuring 2 ½ Acres situated at Maili Tatu in Isiolo pending the hearing and determination of this suit.

(4) THAT the officer commanding Tigania Police Station (O.C.S) to ensure compliance.

(5) THAT the costs of this application be in cause.

2. The Application is based on the grounds:

(1) THAT the Deceased entered into a sale agreement with the Respondent/Defendant on 15th March, 2005 for sale of unsurveyed parcel of Land measuring 2 ½ Acres situated at Maili Tatu in Isiolo.

(2) THAT the Deceased and the defendant executed the said agreement after the Respondent was paid by the Deceased.

(3) THAT the Deceased's family has been farming on the said parcel of land for the last six (6) years.

(4) THAT the Defendant has persistently threatened the Applicant's family with harm if they enter

or use the said parcel of land.

(5) THAT unless the Applicant /Plaintiff is granted the prayers herein, his claim will be prejudiced and he will suffer irreparable loss and damages.

3. Applicant has also filed a Supporting Affidavit where he has deponed as follows:-

(1) THAT he is the Plaintiff and the administrator of the estate of the late Gulia Mohammed Abdi (Deceased) and therefore competent and authorized to swear this Affidavit.

(2) THAT he is the administrator of the estate of the late Guli Mohammed Abdi pursuant to the Grant of Limited Letters of Administration issued on 25th January, 2011 vide High Court P & A Cause No. 21 of 2010 at Meru (Annexed hereto and marked " AGH-1 " is a copy of the Limited Grant .

(3) THAT his late father entered into a sale agreement with the Defendant in respect of land measuring two and half (2 ½) Acres being unsurveyed parcel of Land situated at Maili Tatu in Isiolo on 15th March, 2005 in which agreement his father Gulia Mohammed Abdi (Deceased) was the purchaser and the defendant was the Vendor. (Annexed hereto and marked "AGH-2" is a copy of the Agreement.

(4) THAT in the said agreement the defendant agreed to sell to the deceased the said parcel of land being 1 ½ Acres unsurveyed parcel of Land situated at Maili Tatu in Isiolo at agreed purchase price of Kenya Shillings Fifteen Thousand (Ksh. 15,000)=.

(5) THAT at the time of signing the sale agreement the deceased paid to the Respondent the sum of Kenya Shilling Fifteen Thousand (Ksh. 15,000/=). Which the defendant acknowledged receipt during the execution of the said agreement before Mugambi Mitheka Advocate.

(6) THAT his deceased father and his family were guaranteed quiet possession of the said parcel of land and took possession immediately and farmed on the land for more than six (6) years.

(7) THAT the Defendant has recently threatened to cause harm to the deceased family if they continued to farm on the suit property herein and has chased them from the property.

(8) THAT he believes that the acts of the Defendant amount to violation of the Constitutional right to property.

(9) THAT he reported the issue to kianjaio-Tigania Station, where he was issued with O.B Number 12/18/10/2016 (annexed herein and marked "AGH-3" is a copy of the O.B).

(10) THAT unless the prayers herein are granted the Deceased Estate will suffer irreparable loss and damages which loss cannot be compensated in damages.

4. When the matter came before me on 08:05:17, defendant /Respondent told the Court that he needed two months to get a counsel. The Court gave him time upto 03:04:17. Come 03:04:17. and defendant made no appearance.

5. The application stands as unopposed the same is allowed with no orders as to costs, but the Injunctive Orders will remain in force for 12 months.

DELIVERED IN OPEN COURT AT MERU THIS 3RD DAY OF MAY, 2017 IN THE PRESENCE OF:-

C:A Janet

In the presence of Ringera H/B for Lakicha for Plaintiff

HON. L. N. MBUGUA

JUDGE