



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT MACHAKOS**

**ELC. SUIT NO. 231 OF 2014**

**RACHAEL MWEIKALI KANYOLO.....1<sup>ST</sup> PLAINTIFF**

**TONY KIOKO KANYOLO.....2<sup>ND</sup> PLAINTIFF**

**FRANSICA KASYOKA KIMANZI.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**ALEXANDER MUSYOKI KANYOLO.....1<sup>ST</sup> DEFENDANT**

**GRACE KATUMBI MUSYOKI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the Application dated 19<sup>th</sup> December, 2014, the Plaintiffs are seeking for the following orders:

*a. That a temporary injunction be granted restraining the Defendants/Respondents whether by themselves, their servants, agents, proxies and any other person acting under their authority from cultivating, tilling, taking away building materials, and/or interfering with the suit Property, Title Numbers Migwani/Kyamboo/169 and Migwani/Kyamboo/337 within Mwingi.*

*b. The OCS Migwani Police Station through the OCPD'S Office to ensure compliance of order 3 above.*

*c. Such other or furthers orders as this Honourable Court may deem fit to grant.*

*d. Costs of this Application be provided for.*

2. In the Application, the Plaintiffs have averred that they are the registered proprietors of the suit properties; that the Defendants have been committing acts of trespass over the suit land and that as a result, they have suffered financial loss.

3. In response, the 1<sup>st</sup> Defendant deponed that he is an elder brother to the deceased, Harman Syanda Kanyolo, whose estate constitute the subject suit properties; that prior to his death, the deceased and the 3<sup>rd</sup> Applicant were judicially separated and that at the time of the separation, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs were minors.

4. According to the 1<sup>st</sup> Defendant, he is the one who took care of the deceased when he was taken ill; that the deceased handed to him the custody of the suit premises and the Title Deeds and that after the death of the deceased, they agreed that the 3<sup>rd</sup> Plaintiff and himself would be the administrators of the Estate of the deceased.

5. The 1<sup>st</sup> Defendant deponed that he was surprised when he learnt that the Applicants had transferred the suit properties into their names and that the said transfer was secured by misrepresentation, deceit and material non-disclosure.

6. According to the 1<sup>st</sup> Defendant, they have never insisted on remaining on the suit premises and that they were on the land as custodians of the land awaiting the succession process to be completed.

7. The Plaintiffs' and the Defendants' advocates filed submissions and authorities which I have considered.

8. It is not in dispute that the suit properties were initially registered in the name of the late Hemen Syanda Kanyolo. However, pursuant to the certificate of confirmation of a Grant dated 21<sup>st</sup> December, 2012, the suit properties were subsequently registered in favour of the Plaintiffs.

9. The Defendants have admitted in their Affidavit that they have not insisted on remaining on the suit premises and that they are only awaiting the completion of the succession process.

10. That succession process was completed the moment the High Court issued to the Plaintiffs with the Certificate of Confirmation of Grant.

11. If the Defendants are not satisfied with the manner in which the suit properties were distributed by the Court, then the proper recourse is for them to move the High Court in Mombasa Succession Cause No. 295 of 2004 and have the said Certificate of Confirmation of Grant revoked. In the meantime, it is the Plaintiffs who are entitled to be in possession of the suit land.

12. Although the Defendants have claimed that the Plaintiffs' suit is time barred, there is no evidence to show that twelve years have lapsed since the Plaintiffs' cause of action arose.

13. Indeed, the Plaintiffs' cause of action could only have arose after the Title Deeds were issued in their names, which was in July, 2014.

14. For those reasons, I find and hold that the Plaintiffs have established a *prima facie* case with chances of success.

15. In the circumstances, I allow the Application dated 19<sup>th</sup> December, 2014 with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16<sup>TH</sup> DAY OF JUNE, 2017.**

**O.A. ANGOTE**

**JUDGE**