



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI**  
**ELC NO. 1586 OF 2016**

**LAWRENCE KIMANI GITAKA &**

**JACINTA WAKONYO GITAKA (Being Administrators of the Estate of**

**GEOFFREY GITAKA KIMANI (DECEASED).....PLAINTIFFS**

**=VERSUS=**

**JOHN MUHUHU GITAKA.....1<sup>ST</sup> DEFENDANT**

**KINOTI AGOSTINO KIOGORA.....2<sup>ND</sup> DEFENDANT**

**KARWITHA PURITY M'MBURUGU.....3<sup>RD</sup>  
DEFENDANT**

**THE LAND REGISTRAR,NAIROBI.....4<sup>TH</sup>  
DEFENDANT**

**RULING**

1. The first and second applicants as well as the first Respondent are administrators of the Estate of the late Geoffrey Gitaka Kimani (Deceased). The deceased was the registered owner of **LR No. 23374/63 (suitland)** situate South of Ruiru Town in Kiambu County. The deceased died on **21<sup>st</sup> January 2001**. The process of succession was carried out and certificate of confirmation of grant was issued on **17<sup>th</sup> September 2009**.

2. During the succession process, the suit land was not included as part of the Estate of the deceased. The beneficiaries of the Estate had however agreed that should any property of the deceased be found not to have been included in the list of the deceased's properties, the same was to be included as part of the deceased's properties for the benefit of all the beneficiaries. The applicants later discovered that the suit land which had been omitted from the deceased's properties had been sold by the first Respondent to the second and third Respondents who benefitted from the proceeds without disclosing the same to the other beneficiaries. This is what prompted the applicants to file a suit against the Respondents and an application in which they seek the following reliefs:-

***i. Spent***

***ii. Spent***

*iii. That an order of inhibition be registered against title No.23374/63 situate south of Ruiru Town pending hearing and determination of this suit.*

*iv. That pending the hearing and determination of the main suit, this Honourable Court be pleased to restrain the Defendant/Respondents by themselves, their servants, agents and or whosoever in any means howsoever from continuing construction, encroaching, trespassing alienating and/or disposing of and/or in any other way interfering with parcel of land being title No. 23374/63 situate south of Ruiru Town.*

*v. That the OCS Ruiru Police Station do oversee the enforcement of court order issued.*

*vi. That costs of this application be provided for.*

3. The applicants contend that if an injunction is not issued, the Respondents are likely to go on interfering with the suitland. Already the second and third Respondents have started putting up a storey building on the suitland which if not stopped may go on and the suitland may even be sold to the detriment of the beneficiaries of the estate of the deceased.

4. The Respondents have opposed the applicant's application based on a replying affidavit sworn on 10<sup>th</sup> January by the first Respondent and that of the second and third Respondents sworn on the same date as well as a further affidavit sworn by the first Respondent on 9<sup>th</sup> February 2017. The first Respondent contends that the suitland is not part of the estate of the deceased. That the suitland had been sold to Sebastian Ndichu Kariuki on 29<sup>th</sup> September 1992 by a company owned by him on instructions of the deceased. That the purchaser later instructed him to sell the same property on his behalf. That is how he ended up selling the suitland to the second and third Respondents vide agreement dated 4<sup>th</sup> August 2016.

5. The second and third Respondents on their part contend that they purchased the suitland from the first Respondents after the first Respondent showed them a copy of sale agreement between his company and Sebastian Ndichu Kariuki. That they have since started putting up a storey building on the suitland but some unknown people have been maliciously interfering with the suitland. That they have since known that the applicants could be the ones responsible after this case was filed.

6. The first Respondent further contends that his father not only instructed him to sell the suitland but other properties as well and that the applicants are only being petty and malicious because he earned commissions from the sale of the suitland.

7. I have carefully considered the applicants application as well as the opposition thereto by the Respondents. I have also considered the written submissions filed herein. This is an application for injunction and order of inhibition .What I only need to determine is whether the applicant have demonstrated that they have a prima facie case against the Respondents.

8. It is not contested that the suitland belonged to the deceased. As a property which belonged to the deceased, it ought to have been included in the list of properties of the deceased to be distributed to the beneficiaries. Though the Respondents contend that the property had been sold during the lifetime of the deceased, the applicants have demonstrated that this may not have been the case. It is not for this court to determine the genuineness of the documents relied by either side. This is a matter which will be decided at the main trial. The main concern of the court at this moment is to determine whether on the materials presented before it, a prima facie case has been made out and it has been held that a prima facie case is not one which will necessarily succeed. On the material presented before me, I find that the applicants have demonstrated that they have a prima facie case with probability of success. I allow the Notice of Motion dated 16<sup>th</sup> December 2016, in terms of prayers **three (3), Four (4), and six (6)**.

It is so ordered.

Dated, Signed and Delivered at **Nairobi on 31<sup>st</sup>** this day of **July, 2017**

**E.O .OBAGA**

**JUDGE**

In the Presence of :-

Mr Kahuthu for Respondents

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**