



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC. MISC. NO. 22 OF 2017**

**ONGAI WASHIANO WETOYI ::::::::::::::::::::::::::::::: 1<sup>ST</sup> APPLICANT**

**MARY NANYAMA BENJAMIN ::::::::::::::::::::::::::::::: 2<sup>ND</sup> APPLICANT**

**VERSUS**

**JULIA MUHONJA THOMAS ::::::::::::::::::::::::::::::: RESPONDENT**

**RULING**

This application is dated 8<sup>th</sup> June 2017 and is brought under section 1a, 1b, 3 and 3a of the Civil Procedure Act and Article 159 of the Constitution of Kenya and seeks the following orders;

1. THAT the application hereto be certified urgent and heard exparte in the first instance.
2. THAT an injunction do issue against the respondent either in person or through her assignee or agent and or servant from trespassing, leasing, cutting down trees and or doing any development in respect to the parcel of land NORTH KABRAS/MATSAKHA/304 and which belong to the applicants who are beneficial owners of the deceased WASHSINO WETOYI MAYIRA ALIAS WASHISINO WETOI pending the hearing and final determination of the application hereto interparties and or until further orders.
3. THAT cost of this application be provided for.

The applicants' submitted that, they are beneficiaries of the land parcel number NORTH KABRAS/MATSAKHA/304 (estate of the deceased WASHISINO WETOYI MAYIBA ALIAS WASHISINO WETOI a copy of official search annexed. The respondent is a stranger to the family of late WASHISINO WETOYI MAYIR ALIAS WASHISINO WETOI. That following the demise of the late WASISINO WETOYI MAYIRA ALIAS WASHISINO WETOYI they have survived him and have annexed the death certificate. That the respondent is trespassing, leasing and or cutting trees and/ or developing on the land parcel No. NORTH/MATSAKHA/868 that is part of the land NORTH KABRAS/MATSAKHA/304 registered in the names of WASHISINO WETOYI MAYIRA ALIAS WASHISINO WETOI deceased. It is the interest of justice that an injunction is issued restraining the respondent her assignee, personal representative, agent and or servant from trespassing, leasing, selling and or doing any development on aforesaid land parcel No. NORTH KABRAS/MATSAKHA/304.

This court has considered the applicant's submissions and the supporting affidavit therein. The respondent was served and failed to attend court and/or oppose the application. The application being one that seeks injunctions, has to be considered within the principles set out in the case of **GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358** and which are:-

- 1. The applicant must show a prima facie case with a probability of success at the trial***
- 2. The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,***
- 3. If in doubt, the Court will decide the application on a balance of convenience.***

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a Court of equity.

That applicant's submitted that, the respondent is trespassing, leasing and or cutting trees and or developing the land of the applicants who are beneficial owners of the and parcel number NORTH KABRAS/MATSAKHA/304 registered in the names of WASHISINO WETOYI MAYIRA ALIAS WASHISINO WETOI deceased. That the applicants are bonafide beneficiaries of the aforesaid parcel of land NORTH/KABRAS/304 in the estate of deceased WASHISINO WETOYI MAYIRA ALIAS WASHISINO WETOI since 1<sup>st</sup> applicant has survived as his late father and 2<sup>nd</sup> applicant has survived as her late husband. That the applicants will suffer irreparable loss and damage unless orders sought are expeditiously granted. However the applicants have not adduced any proof of their relationship with the deceased if at all to confirm their locus in this matter. I find that the applicants have failed to establish a prima facie case in this matter and an injunction cannot be granted. I find the application has no merit and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 14<sup>TH</sup> DAY OF NOVEMBER 2017.**

**N.A. MATHEKA**

**JUDGE**