



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 1611 OF 2016**

**BETH NJAMBI .....1<sup>ST</sup> PLAINTIFF**  
**TABITHA WAITHERA.....2<sup>ND</sup> PLAINTIFF**  
**JACINTA WAMBUI.....3<sup>RD</sup> PLAINTIFF**  
**=VERSUS=**  
**DANIEL NG'ANG'A MUGO.....DEFENDANT**

**RULING**

1. The Plaintiff/Applicants are daughters of the late Gathokore Mugo (deceased). The Defendant/Respondent is the adopted son of the deceased. The first applicant is the sole administratrix of the estate of the deceased. During the distribution of the estate of the deceased, it was agreed that the first applicant and the respondent were to be registered as joint tenants in common of LR NO.LOC.3/Mukuria/150 (suit property). On 18<sup>th</sup> August 2004, the suit property was jointly registered in the name of the first applicant and the respondent and a title deed given accordingly.
2. The applicants filed a Notice of Motion dated 16<sup>th</sup> December 2016 seeking an injunction to restrain the respondent or his servants or agents from dealing with the suit property in any manner. The applicants also sought an order directing the Land Registrar Muruga County to register a restriction barring any dealings on the suit property.
3. The applicants contend that the respondent fraudulently had the suit property registered in his sole name and that he is now in the process of sub-dividing it and selling it on the ground that women are not supposed to have a share of their father's property.
4. The respondent has opposed the applicant's application based on a replying affidavit sworn on 5<sup>th</sup> May 2017. The respondent contends that the suit property is now registered in his name pursuant to a transfer which was obtained with the consent of all the applicants.
5. I have considered the applicants application as well as the opposition thereto by the respondent. I have also considered the submissions by the parties herein. This is an application for injunction. In such an application, the applicants are expected to demonstrate that they have a prima facie case with probability of success.
6. I have looked at the documents annexed to the applicant's application as well as the ones which are

annexed to the respondent's replying affidavit. The applicants state that they are all illiterate and that they do not know English. The respondent has annexed documents in which the three applicants are alleged to have agreed that the suit property be transferred to the respondent as a gift. There is also another document annexed to the respondent's affidavit showing that the first applicant appeared before the Land Control Board and consent to transfer was granted. The applicants deny that this was not the case.

7. There are contested facts which can only be determined at the trial of this suit. The Respondent claims that the applicants are all married and that they do not have houses on the suit property. This may be so but that does not prevent them from claiming a share of their father's property. The purpose of an injunction is to preserve a property in dispute until a dispute is resolved. It cannot be granted where it is clear that its effect will disentitle one party from the rights he has been enjoying or will lead to his eviction. A letter dated 3<sup>rd</sup> October 1994 written by the District Commissioner Murang'a shows that all the applicants were all married and their ages ranged between 84 years ,60 years and 51 years respectively.

In view of the serious conflicts of facts in this case the best order to be given is an order of maintenance of *status quo*. The respondent should continue utilising the land for subsistence but there should be no transfer of any portion of the suit land. The Land Registrar Murang'a County is hereby directed to register a restriction inhibiting any dealings on the suit property until this suit is heard and determined. Costs of this application shall be costs in the cause. An order is given transferring this file to Murang'a Environment and Land Court where the suit property is situate.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **13<sup>th</sup>** day of **November 2017**.

**E.O.OBAGA**

**JUDGE**

In the absence of the parties who were away of the date and time for delivery of Ruling.

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**