



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 14 OF 2017**

**MUIA NGUTHU** (*Suing as the legal representative of the Estate of NGUTHU SIMBA (DECEASED)*) .....**PLAINTIFF**

**VERSUS**

**KINYUA SIMBA** .....**1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR-KITUI DISTRICT**...**2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL**.....**3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff's Application dated 24<sup>th</sup> January, 2017 is seeking for the following orders:

***a. That this Honourable Court be pleased to issue an interim order of injunction restraining the Defendant from alienating, sub-dividing, selling or placing a charge on the suit property or using the Title Deed issued on 29<sup>th</sup> May, 2009 pending the hearing and determination of the main suit.***

***b. That costs of this Application be in the cause.***

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that the suit property has been a subject of a series of suits between her late husband and the 1<sup>st</sup> Defendant; that the dispute was heard by the then Kitui District Land Tribunal and the then Embu Provincial Land Appeals Committee and that the Tribunal found that the land belongs to her late husband.

3. In contempt of the order of the court, the Plaintiff has deponed that the 1<sup>st</sup> Defendant caused the suit land to be registered in favour of her late husband and himself and that the said Title Deed ought to be revoked by this court.

4. The 1<sup>st</sup> Defendant filed Grounds of Opposition in which he stated that the suit is time barred; that the Plaintiff does not have the consent of the other co-administrators to file the suit and that there are other active parallel proceedings in the lower court being Kitui CMCC No. 14 of 2014 in respect of the same property.

5. In his Replying Affidavit, the 1<sup>st</sup> Defendant deponed that he owns the suit land jointly with the late Nguthu Simba; that the said Nguthu Simba was his brother and that the suit land belongs to the family of

Simba.

6. According to the 1<sup>st</sup> Defendant, during the adjudication process, the land was adjudicated in the names of the two of them; that while implementing the decision of the Minister, an error was committed deleting his name from the register and that the clan agreed that the suit land should be sub-divided into nine (9) portions.

7. It is the 1<sup>st</sup> Respondent's case that his late brother who had five wives was to get five portions while him was to get four portions of the suit land because he has four wives.

8. In her Further Affidavit, the Plaintiff deponed that she filed the matter to protect her interest and those of the Estate of Nguthu Simba; that the Magistrate's court does not have jurisdiction to hear the dispute herein and that the 1<sup>st</sup> Defendant went against the Ruling of the Appeals Committee of 16<sup>th</sup> October, 2008.

9. The advocates for the two parties filed their respective submissions and authorities which I have considered.

10. The Plaintiff is one of the administrators of the Estate of the late Nguthu Simba. The other administrator of the Estate of the late Nguthu Simba is Patrick Musinga.

11. The Plaintiff's case revolves around the proceedings of the Kitui District Land Disputes Tribunal and the Embu Provincial Lands Disputes Appeals Committee.

12. The proceedings of the Kitui District Land Disputes Tribunal shows that the 1<sup>st</sup> Defendant herein sued Patrick Musinga, who is one of the administrators of the Estate of Nguthu, in Land Case No. 73 of 29<sup>th</sup> September, 2008.

13. After hearing the dispute, the Tribunal held that the suit land should be sub-divided into nine (9) portions.

14. It is this decision that the 1<sup>st</sup> Defendant herein is relying on.

15. According to 1<sup>st</sup> Defendant, the nine (9) portions are in respect to the five wives that the late Nguthu has and his own four wives.

16. Consequently, it is the 1<sup>st</sup> Defendant's case that indeed the suit land was correctly registered in favour of his late brother Nguthu and himself on 29<sup>th</sup> May, 2009.

17. The Plaintiff on the other hand has exhibited the proceeding of the Embu Provincial Lands Disputes Appeals Committee which shows that Patrick Musinga Nguthu appealed against the decision of the Kitui District Land Disputes Tribunal.

18. From that decision, the Appeals Committee nullified the decision of the Tribunal in its decision of 23<sup>rd</sup> March, 2009.

19. In the said decision, the Appeals Committee found that the land belongs to Mr. Nguthu Simba.

20. The proceedings of the Appeals Committee shows that both parties were heard.

21. There is no indication that the 1<sup>st</sup> Defendant appealed against the decision of the Appeals Committee.

22. Having annulled the decision of the Tribunal, it is not clear how a Title Deed was issued on 29<sup>th</sup> May, 2009 in the joint names of Nguthu Simba and the 1<sup>st</sup> Defendant.

23. Although the 1<sup>st</sup> Defendant has stated that there is a matter which is pending in Kitui CMCC No. 252 of 2014 in respect to the suit land, I have noted that it is the 1<sup>st</sup> Defendant who filed that suit.

24. Consequently, and in view of the Plaintiff's assertion that the lower court does not have the requisite jurisdiction, she was entitled to file an independent suit in this court pending the determination of the issue of the lower court's jurisdiction to hear the matter.

25. The 1<sup>st</sup> Defendant has further deponed that the suit is incompetent because the Plaintiff did not have the consent of her co-administrator to file the suit.

26. In my view, the fact that the suit was filed by only one administrator cannot be a ground to defeat the suit, especially in a situation where the other co-administrator is not complaining.

27. All that the Plaintiff is doing, on behalf of the Estate of the late Nguthu, is to protect the interests of the Estate of the late Nguthu, and nothing more.

28. The suit property was registered in favour of the Plaintiff and the 1<sup>st</sup> Defendant on 29<sup>th</sup> May, 2009.

29. Consequently, it cannot be said that the suit is time barred considering that twelve (12) years have not lapsed since 29<sup>th</sup> May, 2009.

30. Considering that the 1<sup>st</sup> Respondent has not explained why he has never challenged the decision of the Embu Provincial Disputes Lands Appeals Committee, I find that the Plaintiff has established a prima facie case with chances of success.

31. I therefore allow the Application dated 24<sup>th</sup> January, 2017 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**