



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**LAND CASE NO. 84 OF 2013**

**GETRUDE CHAO WAITA**

**STEPHEN MBAKI WAITA**

**(As Administrators of the Estate of Francis Waita**

**Mbaki (Decased).....PLAINTIFFS/APPLICANTS**

**VERSUS**

**AGNES WAMAITHA KIBUCHI**

**EDITH WANGARI KANYEKI.....DEFENDANTS/RESPONDENTS**

**RULING**

1. The applicants filed their application dated 29.7.2015 brought under the provisions of section 28 (a) and 68 of the Land Registration Act. The applicant seeks for an order;

***“An inhibition be issued to prevent and bar the Respondents from undertaking any dealings on plot No 627/VI/MN pending determination of the suit.”***

2. The application is supported by the grounds on the face of it and the affidavit deposed to by Stephen Mbaki Waita. The application is opposed by the Respondents vide replying affidavit sworn by Agnes W. Kibuchi the 1<sup>st</sup> Respondent. In the replying affidavit at paragraph 9, the deponent stated that the applicant had obtained interim orders of inhibition in High Court Succession Cause No 76 of 2012 which they have failed to list for hearing.

3. I called for the file High Court Succession Cause No 76 of 2012. The record in that file shows the applicants herein filed an application dated 20.9.2014 seeking inhibitory orders. After considering the application exparte, Odero J. granted orders of temporary inhibition on 23.9.2014 and the applicants extracted the orders on 24.9.2014. That application has not been heard on merits.

4. Instead of listing the application for hearing they went to slumber. When they woke up they filed a fresh application (current application) under certificate of urgency before me. In the instant application, similar orders were sought without disclosing the existence of the orders they had obtained. This Court is astounded that the applicants having obtained inhibition orders would still make a fresh application to be heard exparte at the first instance.

5. This action by the applicants is a clear abuse of the Court process. The same cannot be tolerated as it is wasting the Court's time as well as making the respondents to incur costs in defending the same application twice. On this account, I will not consider the present application on its merits. The same is struck out with costs to the Respondents for being abuse of the Court process.

**Ruling dated and delivered at Mombasa this 21<sup>st</sup> day of July 2016**

**A. OMOLLO**

**JUDGE**