



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 224 OF 2013

1. KAVUMBI KITSAO CHENGO

2. THUBU KITSAO KAZUNGU (administrators of

BENSON KAHINDI BAYA (deceased).....PLAINTIFFS

=VERSUS=

1. SAMUEL CHARO MWENI (sued in his own capacity

and as the legal representative of the estate of the late

KARISA MADUMBO MWENI

2. CHARO NYULE MRAMBA

3. KALUME NYULE MRAMBA

4. HON. ATTORNEY GENERAL (sued on behalf of

HON. RESIDENT MAGISTRATE-KALOLENI.....DEFENDANTS

RULING

1. The Notice of Motion that is before me is the one dated 14th December, 2015 in which the 1st, 2nd and 3rd Defendants are seeking for the following orders:-

(a) THAT a temporary injunction order do issue restraining the Plaintiffs/ Respondents by themselves, their servants, agents, family members and any other person deriving interest and/or acting under them from subdividing, selling portions from the suit premises being Plot No. Kaloleni/Chalani/III and/or allowing strangers to construct structures thereon until this application is heard and finalized.

(b) THAT a temporary injunction order do issue restraining the Plaintiffs/Respondents by themselves, their servants, family members and any other person deriving interest and/or acting under them from subdividing, selling portions from the suit premises being Plot No. Kaloleni/Chalani/III and/or allowing strangers to construct structures thereon until this suit is heard and finalised.

2. The Application is grounded on the fact that unless the Plaintiffs are stopped by this court, they will continue selling portions of the suit land.
3. In his Affidavit, the 1st Defendant/Applicant deponed that the Plaintiff and her agents are subdividing the suit land and selling it; that the actions by the Plaintiffs of selling the suit property is meant to defeat justice and that it is in the best interest of justice that the Plaintiff should be enjoined.
4. The 1st Defendant swore an affidavit and deponed that her, together with her grandson, are the ones entitled to the estate of the late Baya Ngwana; that the late Baya Ngwana is the registered proprietor of the suit property and that it is not true that they are subdividing and selling the suit land.
5. The Plaintiff's advocate filed brief submissions and reiterated what was deponed by his client.
6. I have perused the file and noted that on 31st October, 2014, I granted to the Plaintiffs an order of injunction. The said order restrained the Defendants from selling or dealing in any manner whatsoever with the suit property pending the hearing and determination of the suit.
7. The Defendants are now praying for an order of injunction to issue as against the Plaintiffs.
8. The Defendants have not annexed any document to support the allegation that the Plaintiffs are selling the suit property.
9. Although the defendants have annexed photographs showing the construction of a temporary structure, there is no evidence to show that the said structure does not belong to the Plaintiff's family members.
10. There is also no evidence before me to show that the Plaintiff is subdividing and selling the suit property.
11. In the circumstances, I decline to allow the Defendant's Application dated 14th December, 2015. The Application is dismissed with costs.

Dated, signed and delivered in Malindi this **14th** day of **July**, 2016.

O. A. Angote

Judge