



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 301 OF 2013**

**MISHECK WARUI NUTHU .....1<sup>ST</sup> PLAINTIFF**

**DAVID MWANGI NUTHU .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**STEPHEN KABUYU NUTHU .....DEFENDANT**

**RULING**

***(Application for injunction; plaintiffs stating that defendant is registered as proprietor but in trust; parties being brothers; status quo to be maintained pending hearing of the suit)***

1. The two plaintiffs and the sole defendant are brothers, being sons of one Paul Nuthu Kabuyu (deceased). The defendant is the registered proprietor of the land parcel Kabazi/Munanda/66. It is the case of the plaintiffs that the said parcel of land was purchased and belonged to their deceased father, and that although the defendant is registered as proprietor, he holds the same in trust for all of them. It is their case that the land is family land and that the defendant being the first born, was entrusted to hold the land on their behalf. It is pleaded that on 9th January 2010, the defendant agreed to demarcate the land amongst his brothers but he reneged on his promise and has now threatened to evict the plaintiffs.

2. Together with the suit, the plaintiffs filed an application for injunction, which is the subject of this ruling, to stop the defendant from evicting them.

3. The defendant has not responded to the application but has filed a defence in which he has pleaded that the suit property solely belongs to him. He has refuted any sort of trust.

4. At this point in time, I cannot tell from the material before me whether the defendant holds the property in trust or whether it wholly belongs to him. I am of the view that this application is best decided on a balance of convenience and that the status quo needs to be preserved pending hearing and determination of the suit.

5. I therefore order as follows :-

*(i) That the current status quo as to occupation of the land parcel Kabazi/Munanda/66 be preserved until the conclusion of this suit.*

*(ii) That there is hereby issued an order of inhibition, barring the registration of any disposition,*

*in the register of the land parcel Kabazi/Munanda/66.*

*(iii) Costs of this application shall be costs in the cause.*

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 22<sup>nd</sup> day of October 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr Murimi holding brief for M/s Njeri Njagua & Co. Advocates for the plaintiff/applicants

N/A for defendant /respondent

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**