



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ENVIRONMENT AND LAND CASE NO. NO. 156 OF 2014**

**JAMILA YUSUF MWATSAHU**

**ABBAS YUSUF MWATSAHU**

**ALI YUSUF MWATSAHU**

**FAIZ YUSUF MWATSAHAU ..... PLAINTIFFS**

**-VERSUS-**

**RAJAB PANZA**

**MLONGO ALI**

**ALI HASSAN MWATSAHU ..... DEFENDANTS**

**RULING**

[1] The applicants in this case Jamla Yusuf Mwatsahu, Abbas Yusuf Mwatsahu, Ali Yusuf Mwatsahu and Faiz Yusuf Mwatsahu filed an application in this case against Rajab Panza, Mongo Ali and Ali Hassan Mwatsahu praying for a prohibitory injunction restraining the defendants their agents, employees or anyone claiming under them from trespassing, selling, transferring, subdividing encroaching, alienating, undertaking any construction works or erecting any barriers/walls/references or in any other way dealing or interfering with the plaintiffs occupation in unregistered parcels of land located within Mkilo area Mariakani. The applicant, through Jamila Yusuf Mwatsahu who stated that the applicants are beneficiaries and equitable owners of the unadjudicated and registered parcel of land located in Mikolo area in Mariakani. She stated that the applicants and respondents are members of the same extended family and that they had been in the suit property since they were born. it was argued that the applicants carry out farming activities such as poultry farming, growing of horticultural crops as well as other micro-economic crops and other activities on the said land. They allege that the defendants have threatened to evict the plaintiffs and their families and that the respondents should be restrained from such actions.

[2] The second respondent Mlongo Ali swore an affidavit on authority of the other 2 defendants and averred that the applicants have no beneficial, equitable, rightful or any other interest in the unadjudicated and unregistered parcel of land allocated at Mkilo area in Mariakani. He stated that the applicants are the children of one Yusuf Ali Mwatsahu who is his younger brother and against whom he has filed a suit in Mariakani Principal Magistrate's Court Civil Case No. 70 of 2012 Mlongo Ali v Yusuf

Ali Mwatsahu. That the applicants are living in the parcel of land as licencees of the said Yusuf Ali Mwatsahu and that they have no rights of their own capable of being enforced by this court. He averred that he was given the suit land by his father who is deceased and denied that this is family land. The Respondent denied having threatened the applicants with eviction. He stated that, notwithstanding an injunctive order had been issued against the applicants father stopping him from undertaking any construction on the said parcel of land on 11th March, 2014 a copy of the order from Principal Magistrate's Court Mariakani was annexed to the application. He argued that the proceedings herein related to the same parcel of land. During the hearing the applicant argued that the suit property's value is less than Kshs. 1 million. This fact was not challenged by the respondents.

*[3] These being the respective arguments of the parties, can a prohibitory injunction be issued against the defendants?* The land in question here is unadjudicated and unregistered and it would appear the applicants live on the said land. The defendant alleges the said land was given to him by his deceased father and that it was not a family land. He has filed a case against the applicants father in Mariakani Principal Magistrates Court. The applicants father is alive. There are injunctive orders from the said Mariakani Principal Magistrate's Court preventing the applicants father from developing any structures on the disputed land dated 11th March, 2014. Making any other injunctive orders herein will confuse and complicate the case at Mariakani Principal Magistrates Court. There is no need to have two parallel suits in regard to the same land amongst members of the same family.

[3] The subject matter herein is within the pecuniary jurisdiction of the Principal Magistrate's Court at Mariakani. The value being less than Kshs. 1 million. The court hereby makes the following orders.

- 1. That this suit is transferred to the Principal Magistrate's Court at Mariakani.**
- 2. The same shall be consolidated with PMCC.NO. 70 of 2012 and the issues therein be heard together.**
- 3. The current status quo shall be maintained in that there shall be no construction on the suit land.**
- 4. Parties shall stay as they are and where they are until further orders from the Principal Magistrate's Court Mariakani.**
- 5. Each party shall bear their own costs.**

**Dated and delivered in open court at Mombasa this 4th day of September, 2014.**

**S. MUKUNYA**

**JUDGE**

**4.9.2014**

In the presence of:

Paul Mbuti Advocate for Khatib Advocate for the defendant