



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 9 OF 2016

IN THE MATTER OF THE ESTATE OF WILLIAM PATRICK MUGANE (DECEASED)

AMOS MUCHANGI MURIITHI.....APPLICANT

VERSUS

HENRY NDWIGA KIURA.....1ST RESPONDENT

CHARLES NJERU MUGANE.....2ND RESPONDENT

JOSEPH MUTHEE MURATHI.....3RD RESPONDENT

RULING

1. The applicant herein moved this court vide Chamber Summons filed on 24.09.2020 and wherein he seeks before this court orders that:

i) Spent

ii) Pending the hearing and determination of this application, the Honourable Court be pleased to issue prohibitory orders on Land Parcel No. Gaturi/Nembure/2657 and any other parcels that may have resulted from the said parcels subdivision.

iii) Pending the hearing and determination of the question of revocation of grant dated 17.09.2013 in Succession Cause No. 1251 of 1999 in the high Court at Nairobi issued to the 2nd and 3rd respondents on 07.10.2013, the Honourable court be pleased to order stay of any subdivision, transfer, waste or any dealings and/or alteration in respect of Land Parcel No. Gaturi/Nembure/2657.

iv) The O.C.S. Manyatta Police Station be ordered to provide security in execution of the said orders.

2. The chamber summons is based on the grounds on its face and further supported by the affidavit annexed to the application. In a nutshell, the applicant's case is that he is a beneficiary and one of the grandsons of Njeru Wamichi who is the deceased herein. That the respondents are intruders and not known to any of the family members of the late Njeru Wamichi. That these succession proceedings relate to the estate of Njeru Wamichi who is the deceased in Succession Cause No. 354 of 2007 at Embu High Court and also Succession No. 9 of 2016.

3. It is their case that the respondents have now taken over the parcels of land and started developing them and further that from the commencement of the succession proceedings, the 1st respondent misrepresented himself as the son to the late Munyi Njeru also son of Njeru Wamichi and that Munyi Njeru doesn't appear anywhere in this succession. Further that, Njeru Wamichi was just a guarantor to William Patrick Mugane in a loan of Kshs.10,000/= before his death where he used his title to secure the loan. As such, he urged this court that if the orders sought are not granted, his family and himself stand to be evicted and suffer irreparable loss and damage.

4. The application is opposed by the respondents wherein the 2nd and 3rd respondents depose in their replying affidavits dated 24.10.2019 that, the Land Parcel No. Gaturi/Nembure/2657 was jointly registered in the names of their late father one William Patrick Mugane and Njeru Wamichi and that each of them owned a half share each. That they already had succession done in respect of their late father's share while the other share was left in the name of Njeru Wamichi; they deposed that the 1st respondent filed for revocation proceedings against the grant alleging that the land ought to belong to Njeru Wamichi wholly. It is their case that they had already filed for eviction against the 1st respondent in ELC Case No. 210 of 2015 as the 1st respondent is the one who has been in occupation of the suit land.

5. They argued that the issues raised by the 1st respondent that there was fraud have already been determined in ELC Case No. 210 of 2015

by Angima J. and the same were found to be baseless. That the orders currently sought before this court will affect the implementation of orders in ELC Case No. 210 of 2015 in which the court ordered the County surveyor to mark the boundaries as per the mutation which had already subdivided Land Parcel No. Gaturi/Nembure/2657 into Land Parcel No. Gaturi/ Nembure/13247 and Land Parcel No. Gaturi/ Nembure/13248. That the only thing hindering registration of the new numbers are the restriction and prohibitory orders registered against the said Land Parcel No. Gaturi/Nembure/ 2657 by the 1st respondent. That unless the judgment of the Honourable court is set aside or reviewed, the 2nd and the 3rd respondents have a right to proceed with the implementation of the decree of the Honorable Court and the certificate of confirmed grant issued by this Honourable Court.

6. The 1st respondent equally opposed the application via his replying affidavit dated 28.10.2019 wherein he deposed that the applicant herein is a son of Celeste Murithi who is a son to Ileri Wamici and whereas Ileri Wamici was a brother to Njeru Wamici. That he is not a grandson of Njeru Wamici as he alleges and that the said Njeru Wamici had a child and grandchild who ought to inherit his estate and as such, the applicant is a stranger to these proceedings. They thus prayed for the application to be dismissed with costs.

7. The application was canvassed by way of written submissions and wherein both parties submitted.

8. The 2nd and 3rd respondents herein save for the 1st respondent filed their submissions wherein they reiterated the contents of their respective pleadings filed herein to support their respective cases.

9. I have considered the application herein and the response by the 1st, 2nd and 3rd respondents and further the rival submissions. As I have already noted, the applicant seeks prohibition orders. It is my considered view therefore, that, the issue which this court ought to determine is whether the said orders ought to be granted.

10. As for the order of inhibition, the same is provided for under section **68(1) of the Land Registration Act 2012**. This section gives the court discretion to inhibit registered dealings on land for a particular time or until the occurrence of a particular event.

11. As such, an inhibition order is an order which is in the nature of a prohibitory injunction restraining dealings on land pending further orders by the court. The purpose of the said order is to preserve the property from acts that would otherwise render a court order incapable of being executed and/or to give an opportunity to hear and decide the matter.

12. Issuance of prohibitory orders pursuant to Order 22 Rule 48 (1) of the Civil Procedure Rules, 2010 and further, **Section 68(1) of the Land Registration Act** provide: -

“The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.”

13. These provisions donate to the court discretion to issue orders which are in the nature of an injunction restraining dealings on land pending further orders by the court. The provisions are designed to preserve property from acts that would otherwise render a court order incapable of being executed and to preserve the suit property from being wasted pending hearing and determination of a suit.

14. *The conditions for grant of an order of inhibition are now settled. In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions: -*

1) That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.

2) That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.

3) That the applicant has arguable case.”

(See the case of Japhet Kaimenyi M’ndatho v M’ndatho M’mbwiria [2012] eKLR and In re Estate of Paul Kimeu (Deceased) [2020] eKLR which authorities I find persuasive)

15. In **Philip Mwangi Githinji v Grace Wakarima Githinji (2004) eKLR** Okwengu J (as she then was) held that *before the court can issue such an order, it must be satisfied that the person moving the court for such orders has good grounds for requesting such an inhibition, such grounds would normally be in the form of a sustainable claim over the suit land.*

16. The applicant’s contention for which he desires this court to issue the orders prayed for, is pegged on the fact that he alleges that he is the grandson of one Njeru Wamici who allegedly is the bonafide owner of the suit land. *From the court record, the court notes that such a contest in regard to the ownership as alleged by the applicant in the current application has already been dealt with elsewhere.*

17. *In the instant case, the applicant seeks for orders to inhibit any transaction on Land Parcel No. Gaturi/Nembure/2657. It is also not lost to this court that the suit land has already been subdivided into Land Parcel No. Gaturi/Nembure/13247 and Land Parcel No. Gaturi/Nembure/13248; this is as a result of the consequential orders arising from the decree in the judgment in ELC Case No. 210 of 2015. Further, the respondents have shown a search document which proves that the suit land actually was owned on one part by Njeru Wamici*

and the 2nd and 3rd respondents (after devolvement from the estate of William Patrick Mugane).

18. It is also shown before this court that subdivision of the suit land has already taken place and half share already registered in the names of 2nd and 3rd respondents while the other share remains in the name of Njeru Wamici.

19. As to whether the refusal to grant orders of inhibition would render the applicant's suit nugatory is supported by the fact that there still pends before this court an application to revoke the grant issued and confirmed in Succession Cause No. 9 of 2016. In the same breadth, it is of importance to note that there are similar orders to the ones being currently sought before this court since the search document shows that the same suit land has already been inhibited by one Henry Ndwiga indicating that there should be no dealing in the suit land till Succession Cause No. 9 of 2016 is heard and determined. The summons calling for revocation of grant has not been heard and therefore, the order is still in place. In my view therefore, there is no need for this court to grant orders similar to the ones which are already in place.

20. From the foregoing, I find and hold that the application is in want of merit and a clear abuse of court process and I hereby dismiss the same.

21. No orders as to costs.

22. It is so ordered.

Delivered, dated and signed at Embu this 23rd day of February, 2022.

L. NJUGUNA

JUDGE

.....for the Applicant

.....for the Respondents