



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

Coram: D. K. Kemei - J

**SUCCESSION CAUSE NO.594 OF 2011**

**IN THE MATTER OF THE ESTATE OF PAUL KIMEU (DECEASED)**

**LILIAN NJERI MASIKA**

**KENNEDY MASIKA.....RESPONDENTS/PETITIONERS**

**-VERSUS-**

**JOSEPH NZUKI MASIKA.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**KIOKO KIMEU.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. This Ruling relates to the application dated 25.8.2020.

2. The Applicant/1<sup>st</sup> Objector herein filed summons dated 25.8.2020 under section 47 of the Law of Succession Act: -

**1. Spent.**

**2. Spent.**

**3. THAT the honorable court be pleased to issue an order of inhibition to be registered on Parcel No. Donyo Sabuk/Komarock Block 1/254 by the Land Registrar Machakos.**

**4. THAT costs do abide in the application.**

3. It is supported by supporting affidavit sworn by **Joseph Nzuki Masika** on **28.8.2020** and filed on an even date. In the said affidavit, the deponent avers that the court had ordered for a status quo to be maintained at the commencement of these proceedings and that the deponent discovered that the title is now in the names of the petitioners as evidenced by search dated 28.7.2020 and marked JNM1.

4. In reply to the application is an affidavit deponed by Leonard Nzioka Ngolya on 29.9.2020. He revealed to court that the 1<sup>st</sup> petitioner died on 12.2.2020 as evidenced by her certificate of death marked LNN1. It was pointed out that the certificate of grant in respect of the estate of the deceased was issued and then confirmed on 16.7.2013 (LNN2) Counsel averred that the petitioners had the suit land transmitted to them and that the suit land is still intact.

5. Vide supplementary affidavit deponed on 22.10.2020, the 1<sup>st</sup> objector averred that there were strangers occupying the suit land as purchasers and yet the suit land had previously belonged to the deceased. It was pointed out that the title to the suit land had changed hands severally that the orders sought would protect the interest of the parties until the ownership is determined.

6. After going through the evidence on record, I find the following issues necessary for determination namely:

**i. Whether the Application has merit.**

**ii. Whether grounds have been raised to warrant an order of inhibition.**

**iii. What orders may the court grant?**

7. The record speaks to the fact that title to the suit land is in the names of the petitioners/respondents.

8. In this regard section 25(1) of the Land Registration Act 2012 provides: -

*“The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of court shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor together with all privileges and appurtenances belonging thereto free from all other interest and claims whatsoever but subject to:-*

**a) To the leases, charges and other encumbrances and to the conditions and restrictions, if any shown in the register and**

**b) To such liabilities, rights and interest as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.”**

9. Similarly, section 68 of the Land Registration Act states that;

**“(1) 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.**

**(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.**

10. In the case of **Philip Mwangi Githinji v Grace Wakarima Githinji (2004) eKLR** Lady Justice Okwengu (as she then was) when considering the same provision of the law under the old Act stated inter alia;

**“An order of inhibition issued under section 128 of the Registered Land Act is akin to an order of prohibitory injunction for it restricts the registered owner and any other person from having their transaction regarding the land in question registered against the title. 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.”**

11. The case of **Japhet Kaimenyi M’ndatho v M’ndatho M’mbwiria [2012] eKLR** the court in addressing the threshold for granting orders of inhibition stated;

**“In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-**

**a. 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.**

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

**c. That the applicant has an arguable case.”**

12. I have noted that on record is an application for revocation of grant dated 4.6.2014. It is also noted that directions had been taken that the same be canvassed via viva voce evidence and that the matter has proceeded in which the objector has closed his case and that the petitioners evidence is being awaited. It is also noted that the objector’s application dated 4.6.2014 vide prayer No.3 had sought for an order of prohibition on the suit property pending determination. The court did order for maintenance of status quo. However, the objector has filed several applications seeking for an order of prohibition pending determination of the summons for revocation of grant. It seems the objector has been in a state of panic all this time despite the assurance of the petitioners that the property is still intact. The objector claims that some purchasers are already on the ground. Even though the objector has not availed evidence in the form of photographs, I find that it is good to have some abundance of caution so as to ensure that the subject of the dispute is not interfered with pending determination of this ongoing matter as the same would be rendered nugatory if the orders sought are not granted. This is notwithstanding the fact that the petitioners have claimed that there is no threat of the suit property being alienated. However, I am cognizant of the apprehensiveness that the applicant has as indicated in the supporting affidavit. I find that there would be no prejudice if the order sought in the application is allowed for a limited period only pending the conclusion of the revocation application. I therefore find merit in the application and grant prayer 3.

13. For the avoidance of doubt I make the following orders;

**a) An order of inhibition to be registered on Parcel No. Donyo Sabuk/Komarock Block 1/254 by the Land Registrar Machakos pending the hearing and determination of the application for revocation of grant.**

**b) The parties herein to fix the matter for further hearing as a matter of priority.**

*c) Each party to bear their own costs.*

It is so ordered.

**Dated and delivered at Machakos this 16<sup>th</sup> day of December, 2020.**

**D. K. Kemei**

**Judge**