



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT CHUKA

CONSTITUTION PETITION NO. ...03.....OF 2019

IN THE MATTER OF CONTRAVENTION OF CONSTITUTIONAL RIGHTS

UNDER ARTICLES 23(3), 27(1) & (2), 40 & 47 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTIONS 25, 26, 27, 28 & 29 OF THE LAND ADJUDICATION ACT

AND

IN THE MATTER OF SECTIONS 26 & 110 OF THE LAND REGISTRATION ACT NO. 3 OF 2012

BETWEEN

SERAPHIN NDAGARA M'MWAMBA.....PETITIONER

AND

DAVID N. KANAMPIU.....1ST RESPONDENT

DISTRICT LAND ADJUDICATION & SETTLEMENT

OFFICER MERU SOUTH.....2ND RESPONDENT

DIRECTOR OF LAND ADJUDICATION.....3RD RESPONDENT

LAND REGISTRAR, MERU SOUTH.....4TH RESPONDENT

CHIEF LAND REGISTRAR.....5TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....6TH RESPONDENT

RULING

1. This application is dated 21.5.2019 and seeks orders:

1. That this application be certified urgent.

2. That an interim order of inhibition do issue restraining the registration of dealings in L.R. No. Kathwana/1215 pending the interpartes hearing of this application.

3. That an order of inhibition do issue restraining the registration of dealing in L.R. No. Kathwana/1215 pending the hearing and determination of this application.

4. That costs of this application be provided for.

2. It has the following grounds:-

1. That the 1st Respondent is registered as the owner of L.R. No. Kathwana/1215.
2. That the said parcel of land is the subject of these proceedings.
3. That the 1st Respondent has put out the suit land for sale and various potential buyers have visited the same for inspection.
4. That unless dealings in respect of the suit land are inhibited, the 1st Respondent will move the suit land further from the reach of the petitioner.
5. That the purpose of this application is to preserve the suit land pending the determination of the issues at variance between the parties.

3. The application is buttressed by the affidavit of Seraphine Ndagara M'Mwamba sworn on **21st May, 2019** which states:

I, SERAPHINE NDAGARA M'MWAMBA an adult male person of sound mind and of P. O. Box 69 Marimanti do hereby make oath and state as follows:

1. That I am the Petitioner herein properly versed with all the issues stated herein.
2. That the subject matter of this Petition is L.R. No. Kathwana/1215 which is registered in the name of the 1st Respondent as can be deduced from the certificate of official search attached hereto.
3. That the 1st Respondent is soliciting for buyers of the suit property and has brought several potential purchasers to inspect the same.
4. That I am apprehensive that the 1st Respondent shall deal with the suit property in a manner that shall jeopardize the proper litigation of this petition.
5. That in the premises I humbly pray that an order of inhibition do issue to restrict any intended dealings with the suit property.
6. That it is in the interests of justice and fairness that these orders are sought.
7. That I depose to the foregoing believing the same to be true to the best of my knowledge, belief and understanding.

4. At the exparte stage, Mr. Mark Muriithi, the applicant's advocate asked the court to grant prayer 2 to preserve the suit property.

5. Upon perusal of the apposite pleadings, I order as follows:

- a) The application is **NOT** certified urgent BUT will be heard on priority basis.
- b) Prayer 2 is granted.
- c) Costs shall be in the cause.
- d) The applicant to property serve the application upon the respondent.
- e) The application will be heard interpartes on **13.6.2019** .

Delivered in open Court at Chuka this **27th day of May, 2019** in the presence of:

CA: Ndegwa

Mark Muriithi for the applicant/appellant

P. M. NJOROGE

JUDGE