



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

ELC NO. 293 OF 2017

MURITU EDWARD.....APPLICANT

VERSUS

JULIUS MURITHI MANENE.....RESPONDENT

RULING

1. The application brought to Court by way of a Notice of Motion is dated 22nd December 2016 and seeks orders:-

- (1) This application be certified urgent and be heard ex-parte in the first instance.
- (2) Pending hearing and determination of this application inter-partes this Honourable Court be pleased to order and direct that orders of inhibition do issue inhibiting all dealings and registrations over land parcel No. THAU/MUMU1/17.
- (3) Pending hearing and determination of the suit herein this Honourable Court be pleased to order and direct that orders of inhibition do issue inhibiting all dealings and registrations over land parcel No. THAU/MUMUI/17.
- (4) Pending hearing and determination of this application inter-partes, this Honourable Court be pleased to injunct the Defendant /Respondent, his agents servants, assigns, employes, successors in title or anybody else howsoever from entering, occupying, remaining or in any other way interfering with the Plaintiff /Applicant's and the Applicant's children, agents, servants and/or successors in title, user occupation and enjoyment of land parcel No. THAU/MUMU1/17.
- (5) Pending hearing and determination of the suit herein, this Honourable Court be passed to injunct the Defendant/Respondent, his agents, servants, assigns, employees, successors in title or anybody else howsoever from entering, occupying, remaining or in any other way interfering with the Plaintiff/Applicant and the Applicant's children, agents, servants and/or successors in title, user, occupation and enjoyment of land parcel No. THAU/MUMUI/17.
- (6) This Honourable Court be pleased to issue such further or better ordes as will meet the ends of justice.
- (7) Costs of this application be born by the Defendant/ Respondent.

2. The Application is based on the grounds: -

- (1) The Applicant is the widow and legal representative of the late EDWARD KITHINJI (her

husband).

(2) Since 1970, the Applicant and her children have been in exclusive user, enjoyment and occupation of land parcel No. THUA/MUMUI1/17 and have not only cultivated thereon but have built thereon.

(3) There has been pending before the minister under the provisions of section 29 of the Land Adjudication Act Chapter 284 Laws of Kenya, a dispute before the minister between the deceased EDWARD KITHINJI and his later father, M'ITELEKUA M'IBEERE.

(4) When THAU/MUMUI/17 area was registered and titles issued, the late EDWARD KITHINJI's father the late M'ITELEKUA M'IBEERE got registered as the owner of land parcel NO. THAU/MUMUI/17 but nevertheless the Chief Land Registrar placed a restriction thereon because the Appeals to the Minister was still pending, The appeal had been lodged by the late EDWARD KITHINJI.

(5) All these facts were well known to the Respondent, who is himself a son to the late M'ITELEKUA M'IBEERE.

(6) Stealthily and fraudulently and without notice to the Applicant and her children, the Respondent filed Meru HC. Succession Cause No. 215 of 2008 to the estate of his late father M'ITELEKUA M'IBEERE and upon conclusion filed an application thereon to have lifted the restriction by the Chief Land Registrar entered on 25th February, 2004.

(7) Nevertheless, the Applicant and her children have always remained in total occupation of land parcel No. THUA/MUMUI/17 and they so do to date.

(8) Literally on a daily basis, the Respondent has been bringing potential buyers to the suit land.

(9) If orders of injunction and inhibition are not issued as prayed the Applicant and her children and grandchildren will be evicted from suit land parcel No. THAU/MUMUI/17 and rendered landless and destitute.

(10) It is therefore only fair that the application be allowed.

3. The application was served but no response has been filed. I have perused both the affidavit and Notice of Motion of 22nd December 2016. The Applicant in essence is saying that she was aggrieved by the decision in succession cause No. 215 of 2008.

She is challenging the entire proceedings and judgment thereof before this court. The question is, did the applicant apply for revocation of the grant? How will this court resolve a matter that was handled by a court of competent jurisdiction?

4. I find that the motion has not met the threshold set out in *Giella Versus Cassman Brown & Co Ltd. [1973] EA 358*. These are:-

(a) Demonstration of a Prima Facie case with a high probability of Success.

(b) Demonstration that the Plaintiff stands to suffer irreparable loss unless the temporary injunction sought is granted.

(c) If the Court is unable to determine the application based upon the first two principles, it will decide it upon a balance of convenience.

5. However the court directs that the order of inhibition remains in force until the case is heard and determined so as to ensure that the suit property is preserved.

6. Prayer 2 in the application is allowed otherwise the application is dismissed.

DELIVERED, DATED AND SIGNED AT MERU THIS 30TH DAY OF MAY, 2017 IN THE PRESENCE OF:-

C:A Janet

Mr. Kibiti for Applicant

Respondent in person present

Hon. L. N. MBUGUA

JUDGE