



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 2 OF 2019

ROSE NJERI NDEGWA.....APPELLANT

-VERSUS-

SAMUEL SOBI J. MISINGU..... RESPONDENT

AND

GEORGE MUCHIRI KING'ORI..... 1ST INTENDED INTERESTED PARTY

CATHERINE GATHONI MURAKARU.....2ND INTENDED INTERESTED PARTY

LOISE WANJIRU KING'ORI..... 3RD INTENDED INTERESTED PARTY

RULING

1. By a Notice of Motion dated and filed herein on 24th September, 2021, Rose Njeri Ndegwa (*the Appellant*) prays for orders:

2. That pending the hearing and determination of this Appeal there be an inhibition registered against Title No. Laikipia/Supuko Block 2/1982 (Wiumiririe);

3. That leave be granted to the Appellant to further amend her Memorandum of Appeal to include the three (3) Intended Interested Parties, in terms of the draft Memorandum of Appeal annexed hereto; and

4. That costs of the application be provided for.

2. The application which is supported by an affidavit sworn by the Appellant's counsel Eunice Wamucii Ndegwa is based on the grounds that:

(a) In the pendency of this Appeal and while conservatory orders were in place, the Respondent to the Appeal Samuel Sobi disposed of the suit land to third parties to wit, the Intended Interested Parties;

(b) Rules of natural justice dictate that anyone who might be affected by orders of the Court be enjoined as a party to the suit;

(c) There is need to amend the Memorandum of Appeal to bring it in line with the new developments in the matter; and

(d) It is the interest of justice that the orders sought herein be granted.

3. The Respondent – Samuel Sobi J Misingu is opposed to the application. In his Replying Affidavit sworn and filed herein on 16th November, 2021, the Respondent avers that the decree emanating from the lower Court was fully executed and the suit land was registered in his name.

4. The Respondent further avers that he is entitled to exercise all his proprietary rights over the suit property unless the Court restrict him from doing so. He further avers that this Appeal has been dragging in Court since January 2019 and he is not aware of order of the Court restricting his proprietary rights over the same.

5. The Respondent asserts that the subject matter of this Appeal is land and any changes on the ownership thereof does not affect the Appeal in any manner and hence there is no need in enjoining the so-called Interested Parties to the Appeal.

6. I have carefully perused and considered the Appellant's application as well as the Respondent's response thereto.

7. The Appellant herein craves an order of inhibition to be registered against the suit property as well as leave to amend the Memorandum of Appeal to include parties to whom, according to her, the suit property has since been transferred to by the Respondent. On his part, the Respondent is opposed to the application on account that he is the proprietor thereof and hence entitled to exercise any proprietorship rights thereon. It is further the Respondent's case that this is a land matter and that any changes in the ownership of the land are not bound to affect the Appeal in any manner as to warrant the joinder of the third parties.

8. An order of inhibition is provided for under **Section 68(1) of the Land Registration Act** as follows:

“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 land, lease or charge.”

9. That being the case, it is apparent that such an order of inhibition is similar in nature to an order of prohibitory injunction which bars the registered owner of the property in dispute from registering any transaction over the said property until further orders of the court or until the disposal of the suit wherein the suit property is the subject matter. The Court issuing such an order must therefore be satisfied that the applicant has made out sufficient grounds to warrant the grant of such orders since, like an interlocutory injunction, such an order is only called for where there is need to preserve the property pending trial.

10. In that respect I have looked at the pleadings before me. The Appellant accused the Respondent of disposing off the suit property to the intended Interested Parties in spite of the existence of this Appeal. The Respondent does not deny transferring the suit

property. It is instead his case that he is the registered proprietor of the suit property and that he is entitled to deal therewith in any manner that he deems fit.

11. From Annexure “EWN 2” of the Supporting Affidavit, it is apparent that acting in such belief of his entitlements, the Respondent did on 19th July, 2021 transfer the suit property to the Intended Interested Parties. While the Respondent avers that there was no order precluding him from transferring the property to third parties, I note that in her Ruling dated 17th December, 2019 following an application made by the Appellant, the Honourable Justice M.C Oundo granted orders of *status quo* to the effect that the suit land was to be preserved as it were until such a time that the Appeal was heard and determined.

12. The Appeal herein is yet to be heard and/or determined and I do not know where the Respondent got the audacity to purport to transfer the suit land to the Intended Interested Parties. “Status quo” as I understood it is a Latin phrase that means without change and in the same situation as it was. By purporting to transfer the property to the Intended Interested Parties, the Respondent certainly intended to change the situation of the suit land from what it was when the Court granted the orders of 17th December, 2019.

13. It follows therefore that the Appellant had valid grounds in instituting the Motion dated 24th September, 2021. I find merit in the same and allow it in terms of Prayers 2 and 3 thereof.

14. The Respondent shall bear the costs of the application.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 27TH DAY OF JANUARY, 2022.

In the presence of:

Mr. Macharia holding brief for Mukuha for the Applicant

Mr. Kinyua for the 1st Respondent

No appearance for the Interested Parties

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J. O. OLOLA

JUDGE