



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

CONSTITUTION PETITION NO. 2 OF 2019

IN THE MATTER OF THE ESTATE OF A CONSTITUTION PETITION

BROUGHT PURSUANT TO ARTICLE 22(1) (2) (3) (4) AND 23(1) (2) (3) (A) (B) (C) (D)

(F) 35 AND 258 (1) 2 (2B) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF THE THREATENED CONTRAVENTION OF THE FUNDAMENTAL

RIGHTS AND FREEDOM OF THE PETITIONERS AS ENSHRINED AND PROTECTED

UNDER ARTICLE 40 (1) (2) AND 47, 50 OF THE CONSTITUTION OF KENYA.

AND

IN THE MATTER OF THE LAND ACT 2012

AND

IN THE MATTER OF CONTRAVENTIONS OF THE KERUGOYA E.L.C NO. 6 OF 2018

(FORMERLY HIGH COURT CIVIL CASE NO. 1146/97 AND THE WANG'URU

PRINCIPAL MAGISTRATE'S COURT CIVIL CASE NO. 107 & 113/2014

AND

IN THE MATTER OF CANCELLATION OF TITLES TO LAND L.R NUMBERS

MWEA/MUTITHI/SCHEME/201-400 AND THE PUBLIC LAND NUMBERED

MWEA/MUTITHI/SCHEME

BETWEEN

SAMUEL MUTURI MUUGU.....1ST PETITIONER

DEDAN MUTHUA KIAMA.....2ND PETITIONER

FRANCIS MUTUGI KIMUR.....3RD PETITIONER

GERALD MUTUGI GITHAE.....4TH PETITIONER

JOSEPH GUCHU & 185 OTHERS.....5TH PETITIONER

VERSUS

COUNTY GOVERNMENT OF KIRINYAGA.....1ST RESPONDENT

THE LAND REGISTRAR, KIRINYAGA COUNTY.....2ND RESPONDENT

THE NATIONAL LAND COMMISSION.....3RD RESPONDENT

DAVID NGIGI MWANGI.....4TH RESPONDENT

ELIJAH MUHIA KAGINA.....5TH RESPONDENT

RULING

In a Notice of Motion dated 21st October 2021, the Applicant seeks the following orders;

- 1) Spent
- 2) That the Intended parties of interest sought to be enjoined in the matter Petition No. 2/2019 as defendants be restrained by way of temporary injunction from interfering with status quo pending inter-partes hearing of this application.
- 3) That the Court be pleased to give inhibition orders directing the Land Registrar/land registry Kirinyaga , the 1st and 3rd Respondents herein after the County Government of Kirinyaga and the National Land Commission to abandon further registration, transfers, or any other means disposing of the petitioned land pending hearing and determination of this application
- 4) That the Petitioner be granted leave to add and file a bundle of current search certificates applied on 16th July, 2021.
- 5) That the Petitioners be granted leave to incorporate as Respondents/intended parties of interests threatening to invade the petitioned lands.
- 6) That in determination of this application dated 21st day of October 2021, all Respondents be bound to the orders sought in the application amended on 22nd November, 2019.

The said application is based on grounds shown on the face thereof supported by an affidavit sworn by Samuel Muturi Muugu the same date.

Applicants summary of Facts

The Applicants in their supporting affidavit sworn through Samuel Muturi Muugu made the following depositions:-

1. That I am the Applicant of the Petition No. 2/19 dated 26th March, 2019 and amended on 22nd November, 2019 which the application amended on 22nd November, 2019 haven't been heard to grant prayer sought.
2. That on 23rd March, 2021 as a matter of importance of the certified copies of the search certificates of all the petitioned lands, the Court directed the petitioners to file the 210 copies of the said forms hence applied the same on 16th July, 2021.
3. That I am seeking leave of the Honourable Court to file the document.
4. That the petitioners have discovered issues of further registrations and issuance of the title certificates and transferring of the parcels of the lands in question by registered proprietors including the 4th respondent who transferred L.R MWEA/MUTITHI/SCHEME/361 vide annexure marked **SMM1**.
5. That after receiving the current certified search certificates arouse the following issues herein discovered.
6. That in between the year 16th July 2019, the 4th respondent having been registered owner of the land parcels numbers MWEA/MUTITHI/SCHEME/384, 240, 361, vide annexed exhibit page 105, 115, 122 of the petition document transferred the parcel of land registration No. MWEA/MUTITHI/SCHEME/361 to one MR. NDERITU.
7. That MR. NDERITU having had the information that the land MWEA/MUTITHI/SCHEME/361 was initially obtained by fraudulent acquisition, vide Wang'uru Principal Magistrate Court Case No. CF 517/2015 transferred the parcel to MR. BERNARD HINGA see the attached Police Board annexed and marked **SMM2**.
8. That MR. BERNARD HINGA intends to transfer the same to other parties, on grounds that by a heavy guard of police officers, on

21st May 2021 subdivided the land parcel MWEA/MUTITHI/SCHEME/361 into portions while a permanent building is in place. Attached picture annexes and marked **SMM3**.

9. That the 4th respondent is about to dispose of all those parcels of land in his proprietorship including land parcel number MWEA/MUTITHI/SCHEME/240 which is registered in the proprietorship of his wife ANASTACIA WANGUI NGIGI despite cautions on purchaser's interests vide references annexed and marked **SMM4**.

10. That between 8th September, 2017 vide official search certificates MR. ALLAN NGUNGA NGIRIA was a proprietor of parcel land registration No. MWEA/MUTUTHI/SCHEME/220 and, having been also proprietor of L.R No. MWEA/MUTITHI/SCHEME/385 on malpractice sales of the land sold the land to madam ELIZABETH KARIUKO KAMAU annexed and marked **SMM5** is a green card.

11. That madam ELIZABETH KARIUKO KAMAU repealed her interests in the land registration MWEA/MUTUTHI/SCHEME/385 hence the land reverted back to ALLAN NGUNGA NGIRIA whom on 28th May, 2021 transferred the land to one madam SARA WANJIKU NG'ANG'A.

12. That the land parcel number MWEA/MUTITHI/SCHEME/385 being in occupation of TERESIA WANJIRU NG'ANG'A, on 9th October 2021 SARA WANJIKU NG'ANG'A invaded to cultivate the land by a tractor where the driver encountered hostility and left.

13. That it is clear MR. ALLAN NGUNGA NGIRIA is likely to dispose of the land parcel number L.R. MWEA/MUTITHI/SCHEME/220 and probably parcel No. MWEA/MUTUTHI/SCHEME/322 registered in proprietorship of his wife madam CICILY WANGUI NGUNGA.

14. That the land registration No. MWEA/MUTITHI/SCHEME/386 in in danger of being transferred as it closed on subdivision into 4 portions giving new numbers MWEA/MUTITHI/SCHEME/2708, 2709, 2710, and 2711 annexed and marked **SMM6**.

15. That MR. WESTON MUTHIKE NGIRIA being the proprietor of the above parcel of land registration No. MWEA/MUTITHI/SCHEME/386 and 204 on 4th October, 2021 invaded the land and cultivated in the hours of dawn.

16. That again the land parcel No. MWEA/MUTITHI/SCHEME/378, 306, 217, which are in proprietorship of AGNES WAMWIRUA GICHIRA are in danger of being alienated to other parties if an action restraining further alienation is not put in place as selling of the petitioned lands by the non-occupants is only the option taken by them to evade judgment of the Court.

17. That further beyond explanation, MR. PETER MUCHIRI GAKUO became registered proprietor of parcel land No. MWEA/MUTITHI/SCHEME/261, 266, 302, 253, 294, 301 in between the year 2017-2019 without consent of the occupants and when the said parcel lands are among the petition subject matters annexed and marked **SMM7** are the certified search certificates.

18. That as many proprietors appear on records, many of them remain strangers to the whereabouts or whom they are but with the identified few herein below the petitioners seek for leave to incorporate them as defendants in the manner Petition of 2019 -

1) WESTON MUTHIKE NGIRIA

2) ALLAN NGUNGA NGIRIA

3) GLADYS MWIHAKI NGIRIA

4) CICILY WANGUI NGUNGA

5) ANASTACIA WANGUI NGIGI

6) AGNES WAMWIRUA GICHIRA

7) PETER MUCHIRI GAKUO

8) BERNARD NJOROGE HINGA

9) SARAH WANJIKU NG'ANG'A

19) That it is evident that the petition subject matters are in danger of being alienated to other parties and or wrongfully registered/sold to the wrong beneficiaries.

20) That the act of the parties intended to be added in the petition as defendants reveals the premeditated wrongful alienation of the petitioned lands to innocent buyers making them fall in their trap.

21) That the petition is grounded upon the allocation process which is tampered with and is the issue of contest pending

determination of whether was tampered with.

22) That the petitioner contends against proprietorship to any of the parcel of land registered or to be registered to a proprietor whoever wasn't in the occupation in the year 1995 when 1st respondent affirmed permanent settlement to all those residents in the occupation together with their families having extensively developed the same

23) That the act to enter the petitioned lands by non-occupants is tampering with the evidence therefore probability to cause conflict in determination of the real course of action (the tampered allocation).

24) That it is therefore necessary for the Honourable Court be pleased to issue an inhibition order and an order maintaining status quo.

The said application is not opposed as no replying affidavit or grounds of opposition was filed.

Legal Analysis And Decision

I have considered the notice of motion application dated 21st October, 2021, the supporting affidavit and annexures thereto. The said application is brought under **Order 40 Rule 1A and B, Order 2 Rule 5 Civil Procedure, Section 1A, 1B and 3A of the Civil Procedure Act and Section 68 of the Land Act**. Though these proceedings are commenced by way of petition, the citation for the orders sought in the application are founded on the civil procedure Act and other statutory enactments of parliament. From the raft of orders sought, the applicants also seek to have some intended third parties joined as Defendants. The Applicants also want the alleged intended parties restrained by an order of temporary injunction from interfering with the status quo. The Applicants further seek an order of inhibition against the Land Registrar, Kirinyaga County as well as the National Land Commission from registering, transferring or disposing the subject properties of this petition pending hearing and determination of this application inter-partes and/or the petition herein. Though the application is not opposed, the Court requires the applicants to discharge their burden of proof on the required standard before the orders sought are issued. Since the substantive order being sought is an equitable remedy of a temporary injunction, the Applicants must establish the triple principles as set out in the celebrated case of **Giella Vs Cassman Brown Company (1973) E.A 358**. First, the applicants must make out a prima facie case with a probability of success at the trial. Secondly, the Applicants must show that they are likely to suffer irreparable injury which cannot be adequately compensated by damages and finally, where the court is in doubt, it shall decide on a balance of convenience.

From the affidavit evidence in support of the application sworn by Samuel Muturi Muugu, the suit properties which are the subject of this petition are registered in the names of the intended/ interested parties sought to be joined as defendants. Unless and until the intended interested parties are joined as parties in this suit, the orders sought if granted will be prejudicial as they will be condemned unheard. The complaint by the Applicants is that the intended interested parties were allocated the suit properties through fraud and/or irregularly. It is trite law that a certificate of title issued to the proprietor of land is taken by all courts as a prima facie evidence that the person named as proprietor therein is the absolute and indefeasible owner and the title of that owner is not subject to challenge except on grounds set out under **Section 26 of the land Registration Act, No. 3 of 2012**. Until the allegations of fraud are proved against the intended interested parties who are proprietors of the suit properties, I find that the Applicants have not established a prima facie case with a probability of success at the main trial.

The Applicants have not also demonstrated that they are likely to suffer irreparable injury which cannot be adequately compensated by damages. It is paramount for the Applicants to show that unless the application is allowed, they will suffer a peculiar injury for which damages will not be an adequate remedy. Deciding this application on a balance of convenience, I find that the balance tilts against the grant of the orders sought.

Final Orders

In view of the matters aforementioned, I find the Notice of Motion application dated 21st October, 2021 lack merit and the same is hereby dismissed. Since the application was not opposed, I make no order as to costs.

RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 21ST

DAY OF JANUARY, 2022

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HON. E.C. CHERONO

ELC JUDGE

In the presence of:-

1. Mr. Njoroge for the 4th and 5th Plaintiffs/Respondents
2. 1st Petitioner/Applicant – present
3. 2nd Petitioner/Applicant – present

4. 3rd Petitioner/Applicant – present

5. 4th Petitioner/Applicant – present

6. 5th Petitioner/Applicant - absent

7. Kabuta, Court clerk – present.