



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC PETITION NO. E20 OF 2021**

**IN THE MATTER OF BREACH OF CONSTITUTION**

**IN ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF PROVISION OF LAND ADJUDICATION ACT, LAND**

**CONSOLIDATION ACT, LAND REGISTRATION ACT AND LAND ACT**

**AND**

**IN THE MATTER OF CONSTITUTION OF KENYA 2010**

**(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS**

**PRACTICE AND PROCEDURE RULES**

**BETWEEN**

**CHARLES MUGAMBI.....1<sup>ST</sup> PETITIONER**

**LAWRENCE MUTUMA MUGAMBI.....2<sup>ND</sup> PETITIONER**

**BRIDGET KATHAMBI MUGAMBI.....3<sup>RD</sup> PETITIONER**

**(Suing ad the legal representatives of the estate of FREDRICK MUGAMBI)**

**VERSUS**

**DISTRICT LAND ADJUDICATION & SETTLEMENT**

**OFFICER AMWATHI/MAUA ADJUDICATION.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR ADJUDICATION & SETTLEMENT.....2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR MERU NORTH.....3<sup>RD</sup> RESPONDENT**

**CHIEF LAND REGISTRAR.....4<sup>TH</sup> RESPONDENT**

**THE CABINET SECRETARY**

**MINISTRY OF LANDS AND PHYSICAL PLANNING.....5<sup>TH</sup> RESPONDENT**

NATIONAL LAND COMMISSION.....6<sup>TH</sup> RESPONDENT

HON. ATTORNEY GENERAL.....7<sup>TH</sup> RESPONDENT

AND

KIRIMA GEDION RINGERA.....1<sup>ST</sup> INTERESTED PARTY

MISHACK MATTETA KABERIA.....2<sup>ND</sup> INTERESTED PARTY

ANDREW KAINGA MUNORU.....3<sup>RD</sup> INTERESTED PARTY

KIILI DANIEL KARITHO.....4<sup>TH</sup> INTERESTED PARTY

### RULING

1. The applicant seeks inhibition and conservatory orders against the 2<sup>nd</sup> – 5<sup>th</sup> interested parties, their agents, servants or employees from demolishing any structures, constructing, disposing or otherwise dealing with **L.R No. Amwathi/Maua/7285** pending the hearing of this petition.
2. The application is supported by an affidavit sworn on 2.9.2021 by Bridget Kathambi Mugambi.
3. The grounds are that: **L.R. No. Amwathi/Maua/3457** was fraudulently, illegally and unconstitutionally changed to **L.R. No. Amwathi/Maua/7285** and allocated to the 1<sup>st</sup> interested party without the involvement of the original owner, the estate of Fredrick Mugambi and whose developments thereon are at the risk of destruction.
4. The applicants aver they have been in occupation of the suit land where there are residential houses and if destroyed they stand to suffer loss and damage hence the need for preservation of the subject land pending hearing of the petition.
5. Even though the application has been served together with the main petition neither the respondents nor the interested parties have made a response thereof.
6. The applicants seek for inhibition and conservatory orders. A party seeking conservatory orders must satisfy the court his or her rights are under threat of violation and or are being violated and which violation is likely to continue unless the orders are issued. **See Centre for Rights, Education and Awareness (Crew) & Another –vs- Speaker of the National Assembly & 2 Others [2017] eKLR.**
7. The petition before the court alleges breach of the petitioners’ land rights under **Article 40 of the Constitution** regarding **L.R No. Amwathi/Maua/3457** allegedly illegally and irregularly subdivided by the respondents and transferred to the interested parties without their knowledge, consent or involvement.
8. The petitioners rely on the letter dated 13.10.2010 by the 1<sup>st</sup> respondent to lay claims over **Parcel No. 3457** but which by a letter dated 20.4.2017 the 3<sup>rd</sup> respondent has stated he does not have such records in its possession. The petitioners appear to have raised a claim in 2016 and which by a letter dated 17.1.2017 the 4<sup>th</sup> respondent directed the 3<sup>rd</sup> respondent to investigate.
9. In my view the petitioners appear to have a legitimate claim over the suit land which requires to be preserved until the matter is heard on merits more so given that they are in occupation of the suit land. The orders as sought appear to be directed at the interested parties as opposed to the respondents.
10. In **Gatirau Peter Munya –vs- Dickson Mwenda Githinji and 2 Others [2014] eKLR** the Supreme Court of Kenya held conservatory orders bear a public law connotation in nature of the public interest.
11. In **Board of Management of Uhuru Secondary School –vs- City County Directors of Education & 2 Others [2018] eKLR** the court held an applicant seeking conservatory orders must demonstrate an arguable prima facie case with a likelihood of success and that in the absence of the conservatory orders, he is likely to suffer prejudice and that if the orders sought are not granted, the petition or its substratum will be rendered nugatory.
12. The facts in this matter as stated above are yet to be respected to by both the respondents and the interested parties.
13. Applying the above principles and given the title deed for Parcel No. L.R 7285 was opened on 18.5.2011 and subsequent land transfers made between 2011 – 2016, the issuance of the conservatory orders would not be appropriate in the circumstances. I grant temporary orders of injunction for a period of one year.
14. Regarding inhibition orders, **Section 68 (1) of the Land Registration Act** grants the court powers to impose such an order for a particular period so as to preserve the suit land pending hearing of the matter.

15. In my view, there would be no prejudice if an order for inhibition is granted so as to balance the competing interests of the petitioners who claim to be in occupation and the interested parties who are registered owners of the subject land.

16. The court guided by the principle that, it should always take the course that carries the lower risk of injustice finds it would be in the interest of justice to preserve the property by issuing inhibition orders. **See *Films Rover International and Others –vs- Cannon Films Sales Ltd. [1986] 3 ALL E.R. 772 as cited with approval in Dorcas Muthoni & 2 Others –vs- Michael Ireri Ngari [2016] eKLR.***

17. In the premises I allow the notice of motion in terms of prayers 2 and 4 but with alterations alluded above.

18. The petitioners shall file an undertaking as to damages for Kshs. 2 million within 14 days from the date hereof and set down the petition for hearing within a period of one year otherwise the orders shall stand vacated.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19<sup>TH</sup> DAY OF JANUARY, 2022**

**In presence of:**

Anampiu for petitioners

Kieti for respondents

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**