



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 60 OF 2019**

**JASON KIAMBA KIMBUI.....PLAINTIFF**

**LOISE NYEGERA KIMBUI.....SUBSTITUTED PLAINTIFF**

**VERSUS**

**FRANCIS KAMILINCHUI.....1<sup>ST</sup> DEFENDANT**

**FESTUS KINYUA.....2<sup>ND</sup> DEFENDANT**

**JAMES KAILEMIA.....3<sup>RD</sup> DEFENDANT**

**EDWARD KAIBIRIA.....4<sup>TH</sup> DEFENDANT**

**JOSEPH MUNGANIA RUNJU.....5<sup>TH</sup> DEFENDANT**

**JULIUS NTONGAI.....6<sup>TH</sup> DEFENDANT**

**KAYUYU M'TAKUABI.....7<sup>TH</sup> DEFENDANT**

**RULING**

1. Before the court is a notice of motion dated 28.9.2021 seeking for inhibition, a temporary injunction orders barring and restraining the plaintiff from interfering with the defendants' use and occupation of **L.R No. Kianjai/Mituntu/77**. The application is supported by an affidavit of James Kailemia sworn on 28.9.2021.

2. The grounds upon which the application is made are: the land is registered in the name of Jason Kiamba the deceased plaintiff but now represented by the widow who is alienating the land to one Isaack Munene who is threatening to start construction works therein; the plaintiff has sought for the letters of administration hence there is a likelihood of distribution of the property to third parties which shall prejudice the defendants' counterclaim.

3. The application is opposed by the plaintiffs through a replying affidavit sworn on 4.11.2021. She claims to be the registered owner of the suit land since 1965 which measures approximately 34 acres and out of which they have developed 24 acres with the matrimonial home, a hospital facility by the name Sanitas Family Hospital, funeral home by the name St. Marks, Miraa plantation, dairy farming project and a perimeter fence.

4. Secondly, it is stated the deceased filed **Meru HC ELC No. 47 of 2014** during his lifetime and in which a similar application as the instant orders were sought and granted on 19.4.2014 which consent order still subsists hence there is no purported attempt to evict the applicants.

5. Thirdly it is stated Karambu Kiamba and Isaack Munene have their houses on her side and have no intention of interfering with the applicants' portion hence the claim is baseless.

6. Fourthly it is stated the earlier orders were clear the applicants should not erect any permanent structures which fact the 1<sup>st</sup> defendants before his death notified the 2<sup>nd</sup> – 7<sup>th</sup> defendants as per the annexures to the replying affidavit.

7. Having gone through the application, the replying affidavit and the court file, what comes out clearly is that there are existing orders of injunction issued in favour of the plaintiff restraining the defendants from making permanent structures on the suit land and which orders were consented to on 19.6.2014. The said orders have not been appealed against, set aside and or vacated.

8. In the premises it is not in the interest of justice to grant any more interim orders at this juncture. The parties have also shown reluctance in prosecuting the suit for reasons not very clear.

9. In order to fast-track this matter, the subsisting orders shall remain in force for a period of one year otherwise they shall stand vacated.

10. The application dated 28.9.2021 lacks merit and is therefore dismissed with costs.

11. Parties to comply with **Order 11** and attend case conference within 45 days from the date hereof.

Orders accordingly.

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

**In presence of:**

Aketch for plaintiff/respondent

Miss Mbogo for defendant

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**