



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

LAND AND ENVIRONMENT CASE NO 242 OF 2016

JOSEPH NTONGAI M'ALABWA.....PLAINTIFF

VERSUS

JOHN MICHUBU M'NGUTHARI.....DEFENDANT

RULING

1. This application is dated 21st November, 2016 and seeks orders:-

(1) That the Application be certified urgent and service of the same be dispensed with in the first instance.

(2) That the Court do issue an order of temporary injunction to restrain the Defendant/Respondent his servants, agents or anybody claiming from him from selling, transferring or whatsoever disposing of P/No. 5036 Kangeta Adjudication Section pending the hearing of this application interpartes.

(3) That the Court do issue an order of permanent injunction restraining the defendant, his agents, assignees and those claiming under him from selling transferring and or otherwise disposing off the Parcel of Land No. 5036 Kangeta Adjudication Section pending the hearing and determination of the main suit.

(4) That this honourable Court do issue an inhibition orders restraining any further dealing or dealings with reference to parcel of land known as No. 5036 Kangeta Adjudication Section until this suit is heard and determined and/or pending further orders of this court.

(5) That the inhibition order be served upon the District Land Registrar, Igembe District for Implementation purposes.

(6) That costs of this application be provided for.

2. The application is buttressed by the affidavit of JOSEPH NTONGAI and has the following grounds:-

(a) THAT the Plaintiff is the Purchaser of the said land whereby he purchased 0.40 acres from the Defendant.

(b) The Plaintiff has developed having been put in occupation in 1999.

(c) The Defendant secretly wants to dispose of the land to a 3rd party without due consultation, involvement or participation of the Plaintiff.

(d) That the Defendant has not identified the potential buyers to have suit land alienated which act may render the Plaintiff to suffer irreparable loss and damage once the transfer is effected which act shall render the Plaintiff and his entire family landless.

(e) THAT the Defendant recently obtained a title deed for the land.

(f) The Defendant shall not suffer any prejudice in case the orders sought herein are granted, since the sought orders are specifically meant to preserve the property and consolidate evidence which they shall also have an opportunity to advance their evidence as required by the Rule of Natural Justice.

3. During interpartes hearing, the defendant admitted that he had sold the land to the Plaintiff who was in occupation.

4. I agree with the Plaintiff's Advocate that orders for Injunction are tenable.

5. In the circumstances, it is ordered as follows:-

(1) An Injunctive Order is issued restraining the defendant, his agents assigns and those claiming under him from selling, transferring and/or otherwise disposing of the parcel of Land No. 5036 Kangeta Adjudication Section pending the hearing and determination of the main suit.

(2) An Order of Inhibition be registered against Land Parcel No. 5036 Kangeta Adjudication Section or against the Land Parcel which may have been registered under any name or number emanating from Land Parcel No. 5036 Kangeta Adjudication Section.

(3) Costs shall be in the cause.

DELIVERED IN OPEN COURT AT MERU THIS 20TH DAY OF DECEMBER, 2016 IN THE PRESENCE OF:

CA: Daniel

Nyagaka for the Plaintiff

John Michubu M'Nguthari – Defendant

P .M. NJOROGE

JUDGE