



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL SUIT NO. 54 OF 2012**

**SUSY RUGURU NKANATA.....1ST PLAINTIFF**

**JANE KINANU KIRIMI.....2ND PLAINTIFF**

**WINFRED KANORIO KIRIMI.....3RD PLAINTIFF**

**VERSUS**

**SILAS KIRIMI NKANATA.....1ST DEFENDANT**

**DAVID KIABATI MBOGORI.....2ND DEFENDANT**

**R U L I N G**

This application is dated 27.3.2012 and is said to have been brought under CPR Order 40 Rules 1, 2, 3, Sections 3A, 63 (c) and (e) of the Civil Procedure Act (Cap 21) and Section 128 of the Registered Land Act (Cap 300) and all other enabling provisions of the law, seeks the following orders.

1. ***THAT on the first instance this application be certified as urgent and the same be heard ex parte due to its urgency.***
2. ***THAT this Honourable Court be pleased to issue an order of inhibition and the same be registered against L. R. NO. NKUENE/URUKU/1980 currently registered in the name of the 2nd defendant to stop any dealings and/or transfer of the same pending the hearing and determination of this application.***
3. ***THAT this Honourable Court be pleased to issue orders of temporary injunction to restrain the 2nd defendant by himself his agents, servants, employees or anybody else whatsoever acting under his directives, names or instructions from evicting and, cultivating L. R. NO. NKUENE/URUKU/1980 currently occupied by the plaintiffs or in any other way interfering with the plaintiff's use and occupation of the said parcel of land pending the hearing and determination of this application.***
4. ***THAT this Honourable Court be pleased to issue an order of temporary injunction to restrain the defendants, their agents or any other person acting under their names from selling or any other way interfering with L. R. NO. NKUENE/URUKU/1980 pending hearing and determination of this case.***
5. ***THAT this Honourable Court be pleased to issue any or better orders as it may deem fit and just to meet the ends of justice.***

It has the following grounds:-

- (a) *The 2nd defendant is intending to occupy forcefully L. R. NO. NKUENE/URUKU/1980 which is currently occupied by the plaintiffs*
- (b) *That the plaintiff occupation of the suit land can be verified by this Court visiting the said land.* *Honourable*
- (c) *The said land LR NO. NKUENE/URUKU/1080 belongs to the plaintiffs, and the 1st defendant and the latter held the same in trust for himself and the plaintiffs as it belonged to 1st defendant's deceased father.*
- (d) *The plaintiffs and their family will suffer irreparable loss and damage if the 2nd defendant is allowed to occupy the land before this case is determined.*
- (e) *It is necessary to preserve the status quo of the suit land as the plaintiffs have been in occupation of the suit land for a long time.*
- (f) *The plaintiffs have on the suit land homestead, food crops, trees and other properties.*
- (g) *That the 2nd defendant is threatening the plaintiffs with arrest with a view of occupying the land against the defendants.*
- (h) *The plaintiff have a prima facie case with a high probability of success.*
- (i) *Unless the orders sought herein are issued the 1st defendant will achieve his heinous acts and evict the plaintiffs from the land.*
- (j) *The 2nd defendant does not live or occupy parcel of land No NKUENE/URUKU/1080.*

On 28TH March, 2012, the Hon. Justice J. A. Makau, Judge, granted ex-parte prayers 1, 2 and 3 of the application. It is over 3 years since these prayers were granted on an interim basis.

In their submissions the plaintiff's claim that the defendants do not live on the suit land and that the 1st defendant deserted the plaintiffs and that he now lives at a different place. They argue that the 2nd defendant is not a bonafide purchaser for value and allege serious issues of fraud attributable to him.

In their submissions, the defendants inter alia, claim that at the time the suit land was sold to the 2nd defendant by the 1st defendant, the 1st defendant was trying to save the entire land parcel No. **NKUENE/URUKU/1866** which was under threat of forced sale by auction in payment of the decretal sum in Meru CMCC 327 of 2007 between one **VIRGINIA GATUMWA KIRIMI** and the 1st defendant. The defendants also proffer information that he 1st plaintiff is the mother of the 2nd and 3rd plaintiffs, the former wife of the 1st Defendant. They also state that the 2nd and 3rd plaintiffs are married daughters of the first defendant.

The Executive Officer of this Court visited the suit land on 24th September, 2012. In many respects the Executive Officer's report had no definitive findings. The parties made contradictory claims regarding who was in possession of portions a, b, c, d, e, f and g. The only definitive finding was that there were no residential houses or toilets on Land Parcel **NO. NKUENE/URUKU/1980**. This finding has not been controverted.

I have carefully gone through all the pleadings and submissions proffered by the parties in this matter. Many issues raised in the respective submissions of the parties can only be determined after the main suit has been heard. I need not reinvent the wheel. I will be guided by the wisdom of the Court of Appeal which in the case of **MBUTHIA VERSUS JIMBA CREDIT CORPORATION AND ANOTHER**

[1988] KLR1 opined as follows;-

***“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge in this case had gone far beyond is proper duties and made final findings of fact on disputed affidavits.”***

The authorities proffered by the parties are many and good. He parties have made extensive submissions. However, as I have already said, I decline to be enticed into making final findings of fact at the Interlocutory stage.

However, some facts are not in dispute. There was in existence suit **No. Meru CMCC 327 of 2007** which the 1st defendant lost. There is evidence that the 1st defendant sold land to the 2nd defendant. On 2nd April, 2012, the Honourable Justice J. A. Makau, Judge, varied the original interim orders after the 2nd and 3rd plaintiffs confirmed that they were married and were not living on the suit property contrary to the claim by them that they had a homestead on it. It is not disputed that the scene report by the Executive Officer of this court was pellucid that on Land Parcel No. **NKUENE/URUKU/1980**. There were no residential houses or toilets as at the time the suit land was visited. This means that the plaintiffs were not living on the suit land as they had claimed in the application.

Upon weighing up the relevant strength of each side's propositions, I am inclined to dismiss the application. I do note that there was no prayer to confirm the order of inhibition which was granted on interim basis by the Hon. Justice Makau J. A. Judge, on 28th March, 2012. However, as the 2nd respondent has no objection to the grant of the order of inhibition and in the interests of justice, it will be granted.

It is ordered as follows:-

1. ***The application is dismissed BUT an order of inhibition to be registered against parcel No. NKUENE/URUKU/1980 is granted.***
2. ***Costs shall be in the cause.***

It is so ordered.

**Delivered in Open Court at Meru this 20th day of May, 2015 in the presence of:**

Cc Lilian

Muthamia h/b Baithambu for defendant

**P. M. NJOROGE**

**JUDGE**