



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND AT THIKA

ELC NO. 74 OF 2020

GEORGE IGOGO MUNYINYI.....PLAINTIFF/RESPONDENT

VERSUS

PRISCILA NJOKI IGOGO.....1ST DEFENDANT / APPLICANT

PETER MWAURA IGOGO.....2ND DEFENDANT / APPLICANT

MORRIS KUNGU IGOGO.....3RD DEFENDANT / APPLICANT

NELLIE WAITHERA IGOGO.....4TH DEFENDANT / APPLICANT

CATHERINE WAMUYU MWAURA.....5TH DEFENDANT / APPLICANT

RAHAB WANJIRU KIMANI.....6TH DEFENDANT / APPLICANT

ALICE NJERI GAITI.....7TH DEFENDANT / APPLICANT

CHRISTINE MARY NYAMBURA.....8TH DEFENDANT / APPLICANT

THE LAND REGSITRAR, KIAMBU..... 9TH DEFENDANT / RESPONDENT

THE HON ATTORNEY GENERAL.....10TH DEFENDANT / RESPONDENT

RULING

1. The Plaintiff filed his Notice of Motion application dated 10/9/2020 seeking *inter alia* temporary injunction against the Defendants or their agents from dealing in anyway with land parcel Reference Number Kiambaa/Ruaka/1324 (*now sub divided into sixteen plots Kiambaa/Ruaka 4932 - 4948*) and stay of proceedings in **Kiambu Succession Cause No. 186 of 2013 - The estate of David Igogo Munyinyi**. The late David Igogo was the registered proprietor of parcel Number Kiambaa/Ruaka/1324 (original land).
2. The application was opposed, heard and allowed in terms of the aforesaid prayers on 29/7/2021 by Hon. Lady Justice Gacheru. Dissatisfied with that Ruling, the Defendants/Applicants now seek Review of the Ruling vide the instant application dated 21/10/2021, the subject of this Ruling.
3. The application is premised on the grounds that there is an apparent error on the face of the record in so far as the **temporary injunction** orders were issued vis-à-vis the *status quo* order granted in **Kiambu Succ. Cause No. 186 of 2013** (*hereinafter referred to as Kiambu Court*). That the suit property herein is part of the subject matter in the Kiambu Court where each party was allowed to occupy their parcel of land pending determination of the matter. According to the Defendants, therefore, implementing the injunctive orders would result in the eviction of the Defendants who have been in occupation way before the demise of the late David Igogo Munyinyi.
4. The Application is supported by the Affidavit of **Peter Mwaura Igogo**, the 2nd Defendant of even date. He reiterated the status quo orders issued in Kiambu Court and the net effect of the injunctive orders herein. That if the instant Applicant is not allowed, the Applicants will be evicted from their homes and be rendered destitute. That therefore this is an apparent error on the face of the record and this Court is empowered to review the said Ruling as provided under Section 80 Civil Procedure Act and Order 45 of the Civil Procedure Rules.
5. The application is opposed. The Respondent, **George Igogo Munyinyi** swore a Replying Affidavit on 8/12/2021. He deponed that the application is fatally defective for want of commissioning the Supporting Affidavit and forgery of signature thereon. That upon his father's

death, the deponent and 1st Defendant were appointed co-administrators of his estate in **Kiambu Succ. Cause No. 186 of 2013**.

6. That he later learnt that the 1st Defendant had initiated subdivision of the suit land and transferred the resultant titles to third parties. Consequently he filed an Affidavit of protest in the trial Court whereby the 1st Defendant was barred from further transferring titles of the suit land. A copy of the Ruling is annexed as '**GM-3**'. That therefore, the Applicant is blatantly lying that the trial Court issued status quo orders over the suit land despite evidence to the contrary.

7. The Respondent further averred that the alleged apparent error on the record calling for Review of the Ruling does not meet the threshold under Order 45 Rule 1 of the Civil Procedure Rules. Lastly, that there has been unreasonable delay in filing the instant Application hence implored the Court to dismiss the Application with costs.

8. Directions were taken to canvass the application by way of written submissions. Only the Respondent filed submissions dated 8/12/2021 through the firm of **Mwaniki Gachoka & Co. Advocates**.

9. Reiterating the averment in his Replying Affidavit, the Respondent submitted that the prayer for Review is principally upsetting the impugned Ruling on an alleged error apparent on the face of the record. That the Applicants have not established such a case as provided for under Order 45 Rule 1 Civil Procedure Rules and to that end the Court of Appeal decisions in **National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR** and **Francis Origo & Anor. v Jacob Kumali Mungala [2005] eKLR** were cited.

Analysis and determination

10. The sole issue for determination is whether the Applicants have established a case for Review of the Ruling dated 29/7/2021.

11. On the record the Applicant's Supporting Affidavit was not commissioned as required under the Oaths and Statutory Declarations Act. For the Court to admit the affidavit it must be a sworn affidavit. The Supporting Affidavit cannot be said to have been sworn for want of commissioning. An affidavit is sworn when it is commissioned by a person authorized to administer oaths as set out in Section 2 of the Act. There is therefore no sworn evidence in support of the Motion. It is a mere statement and the Notice of Motion cannot stand on its own. The evidence being a mere statement does not form the basis for consideration under the Evidence Act. The defect is not in form nor is it a technicality and cannot find cure under Article 159 of Constitution of Kenya.

12. To that extent alone, the application is defective and the same be struck out with costs without the necessity of delving into its merits.

13. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 17TH DAY OF FEBRUARY 2022 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

DELIVERED ONLINE IN THE PRESENCE OF;

MR. MUCHIRI FOR THE PLAINTIFF/RESPONDENT

MRS. FUNDI FOR 1ST, 2ND, 3RD, 4TH, 5TH, 6TH, 7TH AND 8TH DEFENDANT/APPLICANT

9TH AND 10TH DEFENDANTS – ABSENT

MS. PHYLLIS – COURT ASSISTANT