



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**

**ELC NO. 31 OF 2015**

**ANASTASIA NTAKIRA** Suing as legal representative of the the of  
the estate of **K'MWIRIGA MWAMBA (deceased)**.....**PLAINTIFF**

**VERSUS**

**CHRISTOPHER M'MWARI ANTHONY**.....**1ST DEFENDANT**

**FESTUS K. KATHENDU**.....**2ND DEFENDANT**

**DAVID GITUMA**.....**3RD DEFENDANT**

**R U L I N G**

This ruling relates to two matters. The first one is an application dated 28/4/2015 by the plaintiff. It 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 grant a temporary injunction restraining the respondent whether by himself his agents and or servants from trespassing on, wasting construction on, alienating or otherwise interfering or dealing with the plaintiff's property being land parcel No. Nkuene/Ngonyi/208 and 236 pending hearing of this application.**
3. **That his honourable court be pleased to grant a temporary injunction restraining the respondent whether b himself his agents and or servant from trespassing on, wasting, construction on, alienating or otherwise interfering or dealing with the plaintiff's property being land parcel No. Nkuene/Ngonyi/208 and 236 pending the hearing and determination of this suit.**
4. **The Officer Commanding (OCS) Nkubu Police Station do enforce compliance of the order above.**
5. **The cost of the application be provided for.**
6. **The honourable court be pleased to make sure further or other orders(sic) it may deem and expedient in the circumstance of the case.**

The application is supported by the affidavit of **ANASTASIA NTAKIRA**,

the plaintiff and has the following grounds:

- a) **The plaintiff/applicant is the administratrix of the estate of the late M'Kwiriga Mwamba and father as per the grant dated 28.04.2010.**
- b) **The plaintiff/applicant is in custody of the original title deeds of land parcel No. Nkuene/Ng'onyi/208 and 236.**
- c) **That the late M'Kwirigia Mwamba died on 28.01.1990 his succession done in 2002 and completed in 2010 only for the plaintiff to present documents to the Meru Registry where she was told the land was transferred in 2001 to the 1st defendant/respondent herein.**
- d) **That the 1st defendant/respondent colluded with the land registry to cause transfer of the deceased lands prior to even doing the succession cause.**
- e) **That the Green Cards of the two parcels of land indicate there was Misc. Civil application No. 48 of 2000 and 159 of 2001 that were used to transfer the land to the 1st defendant/respondent which neither the deceased nor the administratrix were party.**
- f) **That the 1st defendant has already transferred the above land parcels to the 2nd, 3rd and 4th respondents to the detriment of the plaintiff and the estate of the deceased.**
- g) **That it is in the best interest of justice the orders prayed for be granted.**

The second one is a Notice or Preliminary Objection dated 19th May, 2015. It states:

**TAKE NOTICE that the 1st-3rd Defendants will on the 19th day of May, 2015 or on any other day thereafter when the Notice of Motion dated 28th day of April 2015 and/or the suit comes up for hearing raise a preliminary objection on points of law with a view of having the said Notice of Motion and the main suit struck out with costs for the following reasons inter-alia;**

1. **THAT this matter is res judicata LDT No.36 of 2000 (CRISTOPHER M'MWARI & DAVID GITUMA VS M'KWIRIGA M'MWAMBA) which concerns the same subject matter and was between the parties or parties through whom they claim/defend the suit herein.**
2. **THAT the suit is non-suited and otherwise an abuse of the court process.**

My ruling in this matter will in its nature and substance be extempore. This is because a careful reading of the pleadings, submissions and the authorities proffered by the parties show that they deal with issues that can only be handled after the suit has been heard. For example, the claim in the Preliminary Objection that this suit is Res Judicata LDT No. 36 of 2000 is elaborately challenged and it is even claimed that when several transactions were effected, the original owner of the disputed land was already dead and could, therefore, have not been sued by the defendants. Ground 2 that the suit is non-suited and otherwise an abuse of the court process, by its very nature, invites arguments requiring proof. It is not a pure point of law.

The application seeking injunctive orders is veritably nebulous. Although there are four defendants/respondents, prayers 2 and 3 thereof seeks restraining orders against "the respondent." It is not clear who the intended injunctive orders being sought are to be directed at. It is noted that the 4th defended/respondent is the Hon. Attorney General against whom injunctive orders are not issued.

I have carefully considered all the averments, authorities and submissions proffered by the parties. I rule as follows:

1. **The plaintiff's application dated 28.4.2015 is dismissed with costs to be in the cause.**

2. **In the interest of justice and in congruence with prayer 6 of the plaintiff's application dated 28.4.2015, it is ordered that an order of inhibition be issued to be registered against Land Parcel No. Nkuene/Ngonyi/236 to preserve the suit land pending hearing and determination of this suit.**
3. **The Notice of Preliminary Objection on a Point of Law filed by the defendants dated 19.5.2015 is hereby dismissed with costs to be in the cause.**

It is so ordered.

**Delivered in Open Court at Meru this 21st day of October, 2015 in the presence of:**

Cc. Daniel/Lilian

Edwin Kimathi h/b Mutunga for Plaintiff/Applicant

Kieti for 4th Respondents

Firm of Kiautha Arithi Absent for 1st to 3rd Respondent

**P. M. NJOROGE**

**JUDGE**