



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. E012 OF 2021

STEPHEN KIRIINYA (Suing as legal representative of Zipporah Kanono (Deceased)**PLAINTIFF**

VERSUS

ATTORNEY GENERAL**1ST DEFENDANT**

DISTRICT LAND ADJUDICATION

AND SETTLEMENT OFFICER**2ND DEFENDANT**

LAND ADJUDICATION OFFICER**3RD DEFENDANT**

LAND REGISTRAR MERU CENTRAL **4TH DEFENDANT**

JULIUS MAKEMBO **5TH DEFENDANT**

DAVID KIREMA**6TH DEFENDANT**

RULING

1. The court is asked to issue an inhibition order against **L.R No's Ruiru/Rwarera 15 and 5289** pending hearing and determination of this suit and an order compelling the 2nd, 3rd and 4th defendants to cancel the subdivision of **L.R No. Tutua/Rwarera/14** and revert a total of 25 ½ acres to its original actual dimension.
2. The application is supported by the grounds on the face of the motion and a supporting affidavit of Stephen Kiriinya sworn on 16.9.2021.
3. The grounds are that the adjudication section was complete and title deeds were about to be issued and unless the orders sought are granted, the suit would be rendered nugatory, the plaintiff rendered landless and destitute.
4. In the supporting affidavit, the applicant avers he was the legal representative of the estate of the deceased Zipporah Kanono whose land was unlawfully subdivided **Parcel into No's 15 and 5289** transferred to strangers.
5. He averred the deceased had complained to the Minister and through a Minister's letter dated 28.8.1996, the 2nd, 3rd and 4th respondents were directed to revert the land into the deceased name but failed to implement the directives.
6. It was averred by the applicant that the respondents also blocked the applicant's rights to address land board objection over the fraudulent subdivisions and or transfers to strangers which actions were motivated by malice.
7. In what the applicants call a supplementary and or further affidavit sworn on 16.9.2021, it was stated that in 1970, the then lands Minister allocated Parcel **L.R No. Ruiru/Rwarera/14**, measuring 25.5 acres to M'Mungania M'Marete (deceased) who transferred the land to Zipporah Kanono her wife in 1996 but she passed on on 12.1.2014.
8. It was stated that in 2018, the applicant discovered the suit premises was only measuring 7 acres instead of 25.5 acres, the rest having been allegedly transferred to unknown persons.
9. The basis of the plaintiff's claim is the plaint dated 10.2.2021. They claim fraud against the 2nd, 3rd and 4th defendants aver **L.N No. Tutua/Rwarera/14** for abuse of office by making secret, clandestine subdivisions, awarding the suit parcels to unknown people and failing to implement the Minister's directions to reverse the aforesaid subdivisions and or refusing to grant the plaintiff's rights to lodge objection

proceedings over the alleged subdivisions.

10. The plaintiff/applicant pray that court to order the 2nd, 3rd and 4th defendants to reverse the subdivisions by implementing the Minister's letter dated 28.5.1996, declaration that the subdivisions were null and void and an order directing the 2nd, 3rd and 4th defendants to cancel the subdivisions and revert the land to the original owner.

11. **Section 68 (1) of Land Registration Act** allows the court to grant an inhibition against a registered parcel of land for a particular period and or pending a certain occurrence or until further orders. The objective of such an order is to safeguard certain interest. An inhibition has been termed as in the nature of a prohibitory injunction. See *Samuel Njeru Daniel –vs- James Njeru Nthiga & 2 Others [2017] eKLR.*

12. A party seeking such an order must therefore establish a prima facie case with a probability of success, that there will be an irreparable damage or loss unless the orders are granted and lastly that the balance of convenience tilts in favour of granting the orders sought. See *Wambui Njambura –vs- John Waweru Wamai [2019] eKLR.*

13. The plaintiff's/applicant's 2nd prayer sought in the application is in the nature of a mandatory injunction that an order do issue compelling the 2nd, 3rd and 4th defendants to cancel the alleged subdivisions on the initial Tutua/Rwarera/14 and revert a total of 25 ½ acres of land to its original actual dimension.

14. In case of *Kenya Breweries Ltd. & Another –vs- Washington O. Okeya [2002] eKLR,* the court held a mandatory injunction can only be granted where there are exceptional and special circumstances and in a clear case.

15. In this case, the applicant aver the suit land initially was under an adjudication process but the same is complete and that title deeds are about to be issued. There are however no letters to that effect indicating that the register for the adjudication area was complete and or had been transmitted to the Chief Land Officer by the Director of land adjudication and settlement for the issuance of title deeds.

16. Secondly, there is no search to show the suit parcels now falls under the **Land Registration Act** so as to allow this court to issue an inhibition order under **Section 68 of Land Reform Act**. In absence of any search to show that the 5th and 6th defendants were the registered owners of the suit parcels under the **Land Registration Act**, this court would be acting in vain and on speculations if it were to issue such orders.

17. Coming to the issue of mandatory injunction, other than the Minister's letter dated 28.5.1996 and which was followed by the 2nd defendant's letter dated 1.7.1996, advising the applicants to lodge an A/R objection after the adjudication register for the area was published, there is no single letter or record attached to indicate if any of the applicants alleged rights and interests over the land were ever recorded or recognized under the **Land Consolidation Act** or the **Land Adjudication Act Cap 283 and 284** respectively.

18. Further, the applicant has also not attached any record to show if the 5th and 6th respondents were ever recorded as owners of the alleged parcels of land.

19. In *Mrao Ltd –vs- First American Bank of Kenya Ltd & 2 others [2003] eKLR,* the court held a prima facie case is established where a party demonstrates a right which has been infringed by the other party to call for a rebuttal from the other.

20. In this case, the plaintiff has not demonstrated any of their rights which have been breached by the respondents for this court to find the existence of any special or exceptional circumstances for the grant of mandatory order. See *Nation Media Group & 2 Others –vs- John Harun Mwau [2014] eKLR.*

21. Lastly, the deceased raised the issue in 1996 and was advised on what to do. There has been no inordinate delay in seeking for the orders of mandatory injunction which has not been sufficiently explained. I therefore find it unsafe to grant mandatory orders at this juncture especially where the case appears unclear and requiring viva voce evidence at the main hearing.

22. The application dated 16.9.2021 filed on 20.9.2021 lacks merit. The same is dismissed with costs.

23. The plaintiff to serve the amended plaint to all parties to the suit within 30 days from the date hereof.

24. The 1st, 2nd and 3rd defendants to put in any defence within 45 days from the date hereof.

25. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

THIS 23RD DAY OF MARCH, 2022

IN PRESENCE OF:

PLAINTIFF IN PERSON

KIETI FOR RESPONDENTS

COURT ASSISTANT – KANANU

HON. C.K. NZILI

ELC JUDGE