



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KERUGOYA**

**ELC CASE NO. 821 OF 2013 (OS)**

**BEATRICE WAMBUI MUGAMBI ..... PLAINTIFF**

**VERSUS**

**NELSON MWANGI KINGURU (Being sued as the Legal Representative of the Estate of the late**

**ESTHER WANJIRU KINUMBI ..... DEFENDANT**

**RULING**

The plaintiff/applicant herein has filed this suit by Originating Summons seeking to be declared to have acquired title to the whole of land parcel No. MWERUA/KAGIOINI/73 by way of adverse possession having been in exclusive occupation of the same for over 55 years.

Simultaneously with the said Originating Summons, the plaintiff/applicant filed a Notice of Motion under **Section 68 of the Land Registered Act 2012** and **Order 40 Rule 1 of the Civil Procedure Rules** seeking the following substantive prayers:-

- 1. That this Court do place an order of inhibition restraining any dealings on L.R NO. MWERUA/KAGIOINI/73 pending the hearing and final determination of this suit.***
- 2. That the respondent be restrained by way of a temporary injunction from interfering with the plaintiff's exclusive cultivation and occupation of L.R NO. MWERUA/KAGIOINI/73 pending the hearing and determination of this suit.***

The application was opposed and in his replying affidavit, the defendant/respondent deponed, inter alia, that following Succession Cause No. 397 of 2008 at Embu High Court, he was appointed administrator of the Estate of his late mother Esther Wanjiru who owned the land subject of this suit and following confirmation of the grant, the said land was distributed between ALEX WACHIRA MWANGI, EUNICE MICERE KAMUNYE, JACKSON MUTUGI NAHASHON and KENNEDY NJUGUNA KARIUKI. The defendant/respondent is therefore a stranger to the case and in any event, the plaintiff/applicant does not live or cultivate on that land but lives on her own land MWERUA/KAGIOINI/74 which is adjacent to the land subject of this case.

In her response however, the plaintiff/applicant states that she lives and cultivates on both MWERUA/KAGIOINI/73 and 74 since 1958 yet the defendant/respondent has threatened to evict her.

The application was orally canvassed before me on 11<sup>th</sup> February 2014 as the parties are acting in person. I have considered the application and the respective affidavits of the parties as well as the annexures thereto.

As indicated above, the application is brought under **Section 68 of the Land Registration Act** and **Order 40 Rule 1 of the Civil Procedure Rules**. Those provisions deal with inhibitions and the grant of injunctive reliefs respectively. According to the defendant/respondent, parcel No. MWERUA/KAGIOINI/73 which is the subject matter of this suit is registered in the names of ALEX WACHIRA MWANGI, EUNICE MICERE KAMUNYE, JACKSON MUTUGI NAHASHON and KENNEDY NJUGUNA KARIUKI and he is therefore a stranger to this suit. That claim is justified because as per the official search (annexture NMK 5), the land subject of this case was indeed registered in the names of the above named persons on 16<sup>th</sup> October 2013 following the confirmation of High Court Succession Cause No. 397 of 2008 in which the land was sub-divided among the four heirs of Esther Wanjiru Kinumbi while another portion being MWERUA/KAGIOINI/687 was given to the defendant/respondent herein.

It is clear to me therefore that the defendant/respondent has no interest in the suit land subject matter of this suit and is wrongly sued. No orders of inhibition nor injunctive can be issued against one who is not a party to a suit. As the four persons in whose names the land subject matter of this suit are not parties to this suit, no orders adverse to them can be made without giving them an opportunity to be heard. The defendant/respondent has therefore wrongly been sued in this case as he is not the proprietor of the land subject matter of this suit. In the circumstances, the orders sought in the Notice of Motion dated and filed herein on 9<sup>th</sup> December 2013 cannot be granted as they have been brought against the wrong party. The application is accordingly dismissed with costs.

**B.N. OLAO**

**JUDGE**

**27<sup>TH</sup> JUNE, 2014**

27/6/2014

Before

B.N. Olao – Judge

CC – Mwangi

Applicant - present

Respondent – present

COURT:Ruling delivered in open Court this 27<sup>th</sup> June 2014 in the presence of both parties.

**B.N. OLAO**

**JUDGE**

**27<sup>TH</sup> JUNE, 2014**