



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC ORIGINATING SUMMONS NO. E016 OF 2021**

**VICTOR MUTUIRI GITONGA** (Suing as an administrator of the estate of the late

**GIDEON GITONGA NKAABU – (Deceased)**.....1<sup>ST</sup> PLAINTIFF

**JACQUELINE NKIROTE GITONGA** (Suing as an administratrix of the estate of the late

**GEDEON GITONGA NKAABU (Deceased)**.....2<sup>ND</sup> PLAINTIFF

**VINCENT KIMATHI GITONGA** (Suing as an administrator of the estate of the late

**GIDEON GITONGA NKAABU (Deceased)**.....3<sup>RD</sup> PLAINTIFF

**JASPER M'ARIMBA NGUTARI**.....4<sup>TH</sup> PLAINTIFF

**VERSUS**

**MERCY NYAWIRA KINYUA** (Sued as the administratrix of the estate of the late

**DIONYSIUS MUTURUCHIU KINYUA (Deceased)**.....DEFENDANT

**RULING**

**A. THE PRAYERS**

1. The application before the court is the one dated 14.12.2021 brought under **Section 68 of the Land Registration Act** seeking for an order of inhibition against **L.R No. Abogeta Lower-Kiungone/236**. The application is supported by an affidavit of Victor Muuri Gitonga sworn on 30.11.2021.

2. The grounds upon which the application is based are that the respondent has obtained a confirmation of grant, the subject matter herein forming part of the estate of the late Dionysius Muturuchiu Kinyua and there was fear that the subject land may be alienated by the respondent.

**B. GROUNDS OF OPPOSITION**

3. The respondent opposed the application through a replying affidavit sworn on 30.12.2021 on the basis that the application lacks factual or legal basis; the deponent has no authority to swear the affidavit; it has been now 4 ½ years since the grant was issued with the knowledge of the applicants who were parties to the succession cause and that they had no intention to dispose the suit property hence there existed no justification to inhibit the land.

**C. PLEADINGS**

4. The plaintiffs approached this court through an originating summons dated 26.5.2021 seeking for an order that they be declared as adverse possessors of **L.N. No. Abogeta/Lower-Kiungone/236** which they have allegedly occupied and developed since 1889.

**D. INHIBITION ORDERS**

5. **Section 68 of Land Registration Act** grants a court powers to issue an inhibition order which in essence has been described as an equivalent of a prohibitory injunction.
6. For a party to be entitled to a prohibitory injunction, three parameters must be met namely:- a prima facie case with a probability of success, prove of irreparable loss and damage and lastly the balance of convenience should tilt in favour of granting the injunction. A prima facie case has been described in ***Mrao Ltd –vs- First American Bank of Kenya & 2 others [2018] eKLR*** as where it has been established a right which has been breached by the opposite party so as to call for the others' rebuttal.
7. In this suit, the respondent filed a response sworn by Mercy Nyawira Kinyua on 21.6.2021.
8. The applicants' rights if any are yet to crystalize given the court is yet to hear the case and determine the issues as raised by the parties.
9. The originating summons relates to **L.N.No. Abogeta/Lower-Kiungone/236**. The copy of records attached is for Parcel No. 236. The entries thereto indicate there has been both a caution and an inhibition which were registered on 13.10.2007 and 31.10.2007 respectively.
10. The applicants have attached no certificate of search to confirm if that the suit land has been transferred to the respondents after the confirmation of grant. In absence of current search certificate and evidence of any intention by the respondents to dispose the suit land, my finding is that a mere apprehension which is not backed by any concrete evidence may not entitle the applicants as deserving the orders sought.
11. Lastly, the respondents have filed a counterclaim to the originating summons seeking for vacant possession and permanent order of injunction. The balance of convenience therefore tilts in against granting the orders sought.
12. In sum, the application dated 14.12.2021 is dismissed with costs.
13. Parties to comply with **Order 11 within 48 days** and list the matter for hearing.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU THIS 16<sup>TH</sup> DAY OF MARCH, 2022**

**In presence of:**

No appearance for parties

Court Assistant – Kananu

**HON. C.K. NZILI**

**ELC JUDGE**