



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 383 of 2012

ROSEMARY WANJIKU NGIGI

(Suing as the next friend of Peter Ngigi Kamori

being a person of unsound mind).....PLAINTIFF/APPLICANT

VERSUS

NANCY MUNJIRU NGIGI.....DEFENDANT/RESPONDENT

RULING

The Applicant filed an application dated 3/7/2012 seeking an order of inhibition against registration of any dealings on Title No. Ruiru East/Block 1/352 pending the hearing and determination of the suit. The Applicant brings this application as the next of friend to her husband – Peter Ngigi Kamori, who is allegedly a person of unsound mind.

The application is premised on grounds that the suit property is belongs to the Applicant’s husband - Peter Ngigi Kamori, who suffers from hypomania which renders him mentally unstable. The Applicant has since come to learn that on 4/12/2003 her husband purportedly transferred the suit property to the Defendant. This was effected by a power of attorney purportedly executed by her husband on 4/10/2002 at a time when allegedly he had no capacity to donate such power. The Applicant contends that the said transfer is illegal, null and void in view of the fact that her husband lacked capacity to contract. Further that the Applicant had no prior knowledge of the circumstances surrounding the transfer of the suit property until recently.

The application is supported by an affidavit sworn on 3/7/2012 by the Applicant. The Applicant reiterated the contents of the application and annexed documents in support of her claim. The Applicant availed a copy of their marriage certificate marked “RWN1” evidencing their marriage under African Customary Law dated 10/12/1977. She also availed copies of two letters from mental health institutions marked “RWN2 & 3” indicating that her husband has been a patient in their institution. The Applicant further availed copies of the Title Deeds in respect to the suit property in the name of her husband and the Defendant marked “RWN4 & 5” respectively. Finally, the Applicant availed a copy of the power attorney dated 14/10/2002 and marked “RWN6”

Service of this application and the hearing notice was effected upon the Defendant. There is an affidavits of service sworn by Bashir Mumbaha dated 3/10/2012 and 23/1/2013 detailing the service. Despite the service, Defendant has not filed any response to this application. Consequently, the application proceeded *ex-prate* when the same came up for hearing

The court under S. 68(1) of the Land Registration Act, has power to grant orders of inhibition against a suit land restricting registration of any dealing with suit land for a particular time or until the occurrence

of a particular event or generally until further orders.

Makau, J. in **JaphetKaimenyiM’ndatho V M’ndathoM’mbwiria [2012] eKLR** outlined the conditions that an applicant must satisfy in an application for orders of inhibition.

“In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-

- a) That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.***
- b) That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.***
- c) That the applicant has arguable case.”***

The Applicant has demonstrated that she is the wife of Peter NgigiKamori, the original owner of the suit property. She avers that the circumstances that led to the transfer of the suit property from her husband to the Respondent are questionable. It is her claim that her husband suffers mental instability and cannot therefore make good judgment. It is her contention that her husband did not have capacity to execute the power of attorney which resulted to the transfer of the suit property. The Applicant is apprehensive that unless this Court grants an order of inhibition, there is likelihood that suit property will be interfered with and or alienated by the Respondent, noting that she is now registered as the absolute proprietor of the suit property.

Statutory provision (S. 26 Land Registration Act) makes it clear that a person who holds a certificate of title pursuant to a transfer or transmission of land by the proprietor thereof shall be taken as prima facie evidence that the person named as the proprietor of the land is absolute and indefeasible owner. However, the title may nonetheless be challenged on the ground of fraud or misrepresentation to which the person is proved to be a party. The Applicant has alleged that the Respondent acquired title fraudulently. The law recognizes that title is absolute and indefeasible it also recognizes that the same can be challenged in the event of, *inter-alia*, fraud or misrepresentation. Fraud when alleged must be proved. Such proof can only take place in a full hearing. In that regard I find that the Applicant has demonstrated that she has an arguable worth giving judicial time.

It is the view of this court that the Applicant has satisfied the conditions warranting the grant of an order of inhibition. In the circumstances, I make the following orders:

1. An order of inhibition be and is hereby issued against Title No. **Ruiru East/Block 1/352** registered in the name of the Respondent until the hearing and determination of this suit.
2. A copy of the order of inhibition under the seal of this court, with particulars of land be served upon the Land Registrar, Kiambu for its registration in the appropriate register.
3. Costs of this application be in the cause.

Dated, signed and delivered this 22nd day of April 2013

L.N. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/Respondent

.....Court Clerk