



REPUBLIC OF KENYA

High Court at Meru

Environmental & Land Case 29 of 2012

MARETE THAMBURA.....PLAINTIFF

VERSUS

LAWRENCE GUANTAI.....DEFENDANT

R U L I N G

The application herein was filed through a Notice of Motion by way of a Certificate of Urgency and is dated 20th June, 2012. The applicable law is set out on the face of Notice of Motion. It seeks orders: -

1. that the Honourable court be pleased to certify this application urgent, hear the same ex-parte in the first instance and issue orders accordingly.
2. That the Honourable court be pleased to issue an order of inhibition against land parcel **No. ABOTHUGUCHI/IGANE/574** pending the hearing and determination of this application and thereafter pending the hearing and determination of this suit.
3. That the Honourable Court be pleased to issue an order of injunction restraining the Defendant/Respondent from alienating, interfering, transferring and/or dealing in whatsoever way or manner with land parcel **NO.ABOTHUGUCHI/IGANE/574** pending the hearing and determination of this case.
4. That the costs of this application be costs in the cause.

An interim Order of inhibition was granted by the Hon. Mr. Justice J. A. Makau on 21st June, 2012. The application was heard inter Partes on 1st February, 2013.

Counsel for the defendant stated that the defendant, who is the son of the plaintiff, had fraudulently transferred the suit land to himself and wanted to sell it. He referred the Court to the Judgment in Meru District Land Dispute Tribunal Case No. 57 of 2007.

The Tribunal's Judgment was in the following terms (the wording is unaltered)

1. **The plaintiff is the son of the defendant.**
2. **The conduct of plaintiff to his father is not good.**
3. **The plaintiff, Lawrence Guantai Marete should give his father a he goat of 2000/= 'Nthenge in Kimeru custom.'**

4. The defendant, Marete Thambura should give the balance of three acres point 67 to he plaintiff from the total acreage.

The Tribunal's Judgment was filed and read in Meru Chief Magistrate's Court vide Meru CMC LDT No. 17 of 2007.

Counsel wanted the Court to note that the Tribunal only conditionally ordered the father to give the defendant only .67 of an acre to be excised out of the suit land which measures, according to him. 3.67 acres. He pointed out as shown by annexure 'MT2', that the defendant had fraudulently transferred the whole of the suit land, parcel No. **ABOTHUGUCHI/IGANE/574** To himself and the Land Register even indicated that that he had paid consideration of Kshs.20,000/= for the suit land;

Counsel invited the court to look at the supporting affidavit and the accompanying annexures. He noted that even though the defendant had been allowed 14 days to file and serve his replying affidavit on 18th December, 2012, he had not done So. He therefore, believed that the defendant was not opposed to the application unless if he had to raise points of law. He prayed that the plaintiff's application be allowed.

The defendant addressed the Court in Kimeru and the interpretation was done by the Court Clerk. He explained how the suit land was transferred to him. He also asked the Court to give him an order of eviction so that his father and other members of his father's family could be evicted from the suit land. He did not address himself to the issues raised in this application.

After the defendant had closed his case, Counsel for the plaintiff pointed out that the defendant had transferred the whole of the suit land, measuring 3.67 acres to himself. He asked the Court to note that the plaintiff's family, including the defendant's three brothers and father lived on the suit land and they had no other land. This fact warranted the granting of an order of injunction.

Having considered the issues raised in this application and taking into cognizance that the plaintiff did not oppose the application, I rule as follows:

- 1. That an order of inhibition do issue against land parcel No. ABOTHUGUCHI/IGANE/574 pending the hearing and determination of this suit.**
- 2. That an order of injunction do issue restraining the Defendant/Respondent from alienating, interfering, transferring and/or dealing in whatsoever way or manner with land parcel No. ABOTHUGUCHI/IGANE pending the hearing and determination of this suit.**
- 3. Costs be in the cause.**

Written at Meru, this 19th day of March, 2013.

**P. M. NJOROGE
JUDGE**

DELIVERED in Open Court this 18th day of April, 2013 in the presence of: -

Nyamu Nyaga for plaintiff – Absent
Lawrence Guantai – defendant

**P. M. NJOROGE
JUDGE**