



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL SUIT NO.60 OF 2010**

TABITHA KARIMI MUNYUGI.....PLAITIFF/APPLICANT

VERSUS

JOEL MUNYUGI M'IMANENE.....1ST RESPONDENT/DEFENDANT

JOSEPH MUTWIRI MUTHURI T/A

BEACON MANAGEMENT LTD.....2ND RESPONDENT/DEFENDANT

**RULING**

The Application herein is dated 5.5.2010 and was brought to Court by way of a Certificate of Urgency. It sought orders:

1. **THAT** in the first instance this application be certified as very urgent and it be heard ex-parte due to its urgency.
2. **THAT** this Honourable Court be pleased to issue orders of Inhibition and the same be registered against L.R. No. NYAKI/MUNITHU/1444 currently registered in the name of the 2nd defendant to stop any dealings and/or transfer of the same pending the hearing and determination of this suit.
3. **THAT** upon the issuance of prayer number 2 above, this Honourable Court be pleased to order the land registrar, Meru Central, to register orders of inhibition in the appropriate register for compliance.
4. **THAT** this Court be pleased to issue any further or better orders as it may deem fit and just to meet the ends of justice.
5. **THAT** the costs of this application be provided for.
6. **THAT** this Honourable Court be pleased to issue a penal notice for non-compliance of its orders to be issued herein.

Interim orders were granted by Hon. Lady Justice Mary Kasango on 6th May, 2010 which ordered:

1. **THAT the order of inhibition is issued and be registered against parcel of land L. R. NO. NYAKI/MUNITHU/1444 currently registered in the name of the 2nd defendant to stop any dealings and/or transfer of the same pending the hearing and determination of this suit.**
2. **THAT Meru Central land registrar is ordered to resister the order of inhibition in the appropriate register in compliance.**
3. **Interpartes hearing on 25.5.2010.**

Although Interpartes herring was slated for 25.5.2010, the application was heard on 12.3.2013.

The applicant, Tabitha Karimi Munyugi said that she entered the home of the 1st respondent on 25/10/1965 and that he and the 1st respondent had 4 male children and 3 female children. She claimed her marriage to the 1st respondent was a litany of problems involving the family moving from place to place. If she agreed to move from the suitland, that would be her 9th time to move to a new home. She claimed that in 2009 she noticed people visiting the suitland and later on learnt that the 1st respondent wanted to sell it. She claimed that she had a restriction placed against the suit land but the same was fraudulently removed as a result of which the land was transferred to the 2nd respondent. She claimed that she had heard that her husband had bought land at a place called Manyagalo. She claimed that Manyagalo area was a wilderness with hyenas.

Although the applicant had claimed in the application that the respondents had demolished family houses, she never mentioned this claim during the Interparties hearing.

As she did not want to move out of L. R. No. NYAKI/MUNITHU/1444 she prayed that the Court should grant the prayers she sought in her application.

Counsel for the respondents opposed the application and intimated that he was relying on 2 affidavits sworn by the respondents. He asked the Court to note that there was no further affidavit controverting the issues and facts raised in the 2 affidavits. He also averred that there was no prayer in the applicant's application asking the Court to allow her to continue occupying the suit land. Her substantive prayer was for an order of Inhibition. For her to succeed she needed to demonstrate that she had a legally sustainable claim on the suit land. He explained that the suitland was bought by the 1st respondent and was not ancestral land. He submitted that the 1st respondent consulted all members of his family, including the applicant and as the suitland was only 0.405 Ha. in area, the family collectively agreed to sell the land so that they could buy land elsewhere which would be enough to settle all the sons. The Counsel did not mention daughters. Exhibits "JM2-JM6" were produced as proof that 5 parcels of land had indeed been bought.

Counsel for the respondents said that the 1st respondent's family including the applicant moved to the new parcels of land. However, the applicant tried to come back to the suitland, which the 1st respondent with the blessings of his family, had sold to Beacon Management Limited. He stressed that she had no basis to return to the suitland as the company was a purchaser for value.

The counsel for the respondents also submitted that as Beacon Management Limited was a legal entity in itself, it should have been sued in its name.

The counsel for the respondents submitted that the applicant's claim was fatally defective, could not see the light of day and should, therefore, be dismissed.

I have examined the positions taken by the parties, I have noted that the applicant did not controvert the issues and facts raised by the respondents at all. I am inclined to believe the first defendant that he had sold Land Parcel No. NYAKI/MUNITHU/1444 after consulting members of his family. The applicant has not controverted the assertion that the family including the applicant, moved to Manyagalo area and that their home was on Land Parcel No. 186, Manyagalo area which the plaintiff deserted around May, 2010. I find that she has no basis for wanting to return to L. R. No. NYAKI/MUNITHU/1444 which had been sold to Beacon Management Limited with the knowledge and consent of the 1st

respondent's family, including the applicant.

I note that in an affidavit sworn on 25th May, 2010, the applicant's son, Peter Kimathi, stated that what his mother had sworn was false. He also stated that the suit land was sold with the consent of all family members. He was categorical that the family lived in the Manyagalo area where his father had bought five parcels of land. The applicant did not controvert the affidavit or oppose its admissibility.

I agree with counsel for the defendants that Beacon Management Limited should have been sued in its own name. This finding does not affect any decision I am making in this matter.

In the circumstances, I find that the plaintiff's/applicant's application dated 5th May, 2010 has no merit. I hereby dismiss it and order that if there is any Inhibition registered against L. R. NO.NYAKI/MUNITHU/1444 it should be removed forthwith. I award costs to the respondents.

It is so ordered.

**WRITTEN AND SIGNED AT MERU THIS 12TH DAY OF MARCH, 2013.**

**P. M. NJOROGE**

**JUDGE**

**DELIVERED IN OPEN COURT IN MERU THIS 13TH DAY OF MAY, 2013, IN THE PRESENCE OF:**

Gatare h/b for M. Kariuki for Respondents

Applicant in court in person

**P. M. NJOROGE**

**JUDGE**