



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CIVIL CASE 44 OF 2012**

**PAUL KIRIINYA.....PLAINTIFF/APPLICANT**

**VERSUS**

**DELFINA KATHIRI.....DEFENDANT/RESPONDENT**

**RULING**

The applicant filed this suit on 16<sup>th</sup> March, 2012 claiming that he is entitled to 0.40 of an acre which the defendant holds in trust for him being family land. Contemporaneously with filing of the suit the applicant filed notice of Motion pursuant to the provision of Order 51 Rule 1 of Civil Procedure Rules, Section 1A,1B, 3A and 63(e) of Civil Procedure Act Section 128 of the Registered Land Act(Cap.300) repealed seeking to be granted an inhibition order, inhibiting registration of any dealings over L.R.NO.NTIMA/IGOKI/1741 pending the hearing and determination of this case. The applicant also sought costs of the application. The grounds in support of the application are stated on the face of the application. The application is supported by annexed affidavit of the applicant. The application is opposed. The respondent swore a replying affidavit in opposition to the application.

When the application came up for hearing the court heard oral submissions made by Mr. Mbaabu learned Advocate for the applicant and Mr. Gichunge learned Advocate for the respondent. This court has carefully considered the submissions. It has also read the pleadings filed by the parties herein in support of their respective opposing positions. The issue for determination is whether the applicant has laid sufficient basis for this court to grant orders of inhibition against the suit land. Under S.68 of the Land Registered Act 2012(No.3 of 2012) the court has discretion to grant orders of inhibition if it is satisfied the applicant has interest over the suit property which need to be protected pending hearing and determination of the main suit in present application.

The applicant and the respondent are son and mother respectively. The respondent is the registered proprietor of NTIMA/IGOKI/1741. The land was inherited from Applicant's grandfather, and father to the respondent. The applicant claims that the respondent holds the land in trust for the applicant and herself. That the applicant has since 1991 been living on the suit land occupying 0.40 acres and has developed the same extensively and his dwelling house, and several fruit trees amongst others. That the applicant and his family lives on the suit land and has no other land to call home or place to call home and his father is landless. That in 1996 the applicant built 3semi permanent rental houses for the respondent in Nubian/Mjini are from which she solely gets monthly rent of Kshs.1400/= for each. Apart from that the applicant has been supporting the respondent and educating and feeding his siblings. That on 10.8.2011 the respondent demanded that applicant do vacate from the suit land and when he declined, the respondent brought 2 potential buyers one being Sharifa Kassim, to view and buy the suit property so that they could forcibly evict the applicant after the sale; in the alternative the respondent viewed to over the

suit property as security for a loan. This led to the applicant filing caution on 2.9.2011 but the same was lifted by the Land Registrar unreasonably on 1/3/2012. That after lifting of the caution the applicant was served with a demand notice dated 7/3/2012 demanding that he vacate from suit land within 30days as per annexed notice.

The respondent in her replying affidavit admitted that the applicant is her oldest son and she has other 7children. The respondent denied that the applicant is entitled to 0.40 acres since she has other children. The respondent denied that she gets any support from the applicant but he harasses and stresses her in her old age. Respondent denied that the applicant supports her or even built rental houses for her as alleged. The respondent denied the suit land ever belonged to her father as she is the one who bought it and caused it to be registered in her father's name. The applicant further deponed her father was dead when the land was registered in his name since he died while the respondent was a small girl in class 3. The respondent has admitted that her intention is to take bank loan and develop the land and educate her grandchildren who are widowed which plans the applicant is out of frustration.

The respondent has also admitted that it is true she intended to evict the applicant, since he abused his licensee right by cautioning the respondent's land. The respondent further challenged the applicant's suit as lacking merits and that the orders sought would greatly prejudice her. The respondent further opposes the application as she fears if this application is allowed her other children may make similar moves till she is rendered destitute and landless.

In the instant application, there is no dispute the land is registered in the name of the respondent. That he parties in this matter are son and mother respectively. That the applicant has since 1991 been in occupation of the disputed land which he has extensively developed and lives thereon with his family. That he has no other place or land that he calls home. The applicant claims beneficial interest which the respondent has not disputed. The applicant has averred that the respondent intends to evict him together with his family and either dispose of the property through sale or selling a .....12 which the respondent has admitted. The applicant has been in occupation of the suit land for a period of over 21 years and has developed the land all the years without any objection by the respondent. In view of the fact that the applicant has been in occupation for long in the suit land I find that his application is meritorious. It cannot be said to be frivolous and intended to harness and stress the respondent. I find that the applicant has an interest in the land even if it is a right to occupy or use.

In case of **VERONICA WANDIA WAMBUGU-V-STEPHEN MAITETHIA KIRIMI HCCC 146 OF 2010(O.S.)** Meru Hon. Lady Justice Mary Kasango,, stated as follows:

***“ In the light of that, and in order to preserve the property and the motor vehicle to ensure that they are available to the court as a court makes its final determination in this case, the orders of inhibition and injunction are in my view necessary.”***

Further in the case of **MARY KABURO M'NJIKU –V-M'CHABARI MITAMI(HCCC No.62 of 2010)** Meru Hon. Lady Justice M. Kasango stated:-

***“She has to date continued to occupy that land. That claim by the plaintiff was not disputed by the defendant. It is because she has been in occupation of that land that I find her application is not frivolous.”***

The above quoted decision are decisions of the High Court which are not binding on me but I am in agreement with the same.

Besides the above Article 40 2(a) of the Constitution of Kenya provides:-

***“(2) Parliament shall not enact a law that permits the State or any person—***

***(a) To arbitrarily deprive a person of property of any description or of any interest in, or right over,***

*any property of any description; or*

***(b) To limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).***

In the instant case having found that the applicant has certain rights whether as a licensee as submitted by the respondent or rights to occupy and use the land the suit property should therefore be preserved to ensure that the same is available to the court as the court makes its final determination in this case in one way or other. The orders sought are in my view necessary as applicant has demonstrated that there is imminent danger of the property being alienated and the applicant evicted before his right are adjudicated by court.

I therefore find and hold the applicant has shown a prima facie case with probability of success and is deserving the following orders.

***1. An order of inhibition be and is hereby issued, inhibiting registration of any dealings over L.R.NO.NTIMA/IGOKI/1741 till this suit is heard and determined.***

***2.Each party to bear its own costs as the matter is between son and mother.***

**DATED, SIGNED AND DELIVERED AT MERU THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2012.**

**J. A. MAKAU**

**JUDGE**

**Delivered in open court in presence of:**

**1.Mr. Mbabu for the applicant/plaintiff**

**2.Mr. Gichunge for the respondent/defendant**

**J. A. MAKAU**

**JUDGE**