



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CIVIL CASE NO. 21 OF 2010**

**M'IKUNYUA M'IKANDI ..... PLAINTIFF**

**VERSUS**

**J. MUTUMA ANGAINE ..... DEFENDANT**

**RULING**

The plaintiff has sued the defendant seeking an order of declaration that he is the rightful owner of plot number *T69 Gakoromone Meru Municipality* now Meru Municipality Block II/335. He also seeks an order of cancellation of the lease certificate of Meru Municipality Block II/335 (suit property) and the transfer of it into his name. The plaintiff alleges in his plaint that the defendant who in 1992 was a town clerk of Meru Municipal Council illegally surveyed the defendant's plot No. *T69 Gakoromone* and caused a lease certificate to be issued by the commissioner of lands and a title was issued in his name. The defendant in his defence denied that he was issued with a title of the suit property illegally. He pleaded that it was the plaintiff who is actuated by malice and fraudulent intentions in filing the present action. He alleged that the plaintiff amongst other acts forged a letter in 2003 which letter alleged that the survey had been carried out on the suit property. He further alleged that the plaintiff forged his signature, in that letter and in the subsequent letter dated 13<sup>th</sup> September 2005. The defendant also pleaded that the plaintiff's suit is time barred. He therefore sought suit that it be dismissed. The plaintiff filed a Notice of Motion which is being considered here in this ruling dated 22<sup>nd</sup> March 2010. The plaintiff seeks under section 128 of the Registered Land Act Cap 300 an order of inhibition to issue over the suit property to stop any dealing with that property until final determination of this suit. The plaintiff in his affidavit averred that he took possession of the suit property in 1960 and was still in possession to date. That it was not until the year 2004 on carrying out a search he found changes had been effected in the suit property's registration which had changed to title *Meru Municipality Block II/335*. He also found that the plot was registered in the defendant's name. He alleged that the defendant could have used his position as the town clerk to forge documents to support the registration into his name of his plot. The defendant in the replying affidavit denied the plaintiff was allotted plot number T69. He also denied that the plaintiff was in actual occupation. The defendant alleged that the plaintiff's claim was not supported by documentation. The defendant stated that the suit property was amongst the plots that were compulsory acquired by Government and later were offered to people by balloting which he successfully balloted and was allocated the suit property. It was argued by the defendant's learned counsel Mr. Mwirigi that the plaintiff had not shown a *prima facie* case to entitle him to the order he seeks. I respond to that argument by saying what the plaintiff seeks is an order of inhibition to ensure that the suit property is not disposed before the case is determined. The plaintiff needed only in my view to show that he has a probable case which can support the claim for inhibition. This I find that he has done. The annexures to the plaintiff's affidavit sufficiently show that he might have an interest in the suit property. Whether that interest entitles him to the orders of declaration he seeks in this suit can only be determined at the full hearing. It is however in my view right to issue inhibition order to ensure that if the final determination is in favour of the plaintiff the suit property will still be in the defendant's name. It is for that reason that I grant the following orders:-

1. *An order is hereby issued of inhibition to prevent any dealings with the title of parcel number Meru Municipality Block II/335 until final determination of this suit.*

2. *The costs of the Notice of Motion dated 22<sup>nd</sup> March 2010 will be in the cause.*

**Dated, signed and delivered at Meru this 31<sup>st</sup> day of March 2011.**

**MARY KASANGO**  
**JUDGE**