



**CIVIL**

· Order of inhibition.

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CIVIL CASE NO. 103 OF 2010**

**THAMBU MUKUNGA ..... PLAINTIFF**

**VERSUS**

**TOWN COUNCIL OF CHOGORIA ALIAS  
CHOGORIA TOWN COUNCIL**

**..... DEFENDANT**

**RULING**

The plaintiff Thambu Mukunga by this suit seeks orders of declaration that he is the owner of L.R. No. *Mwimbi/Chogoria/501* (suit property) to hold the same in trust for himself and his family. He also seeks an order of rectification and registration of the suit property in his name to hold in trust for himself and his nuclear family. This ruling relates to the Notice of Motion dated 17<sup>th</sup> August 2010. The plaintiff seeks by that Notice of Motion an order of inhibition to issue and an order of status quo to be maintained on the suit property. The plaintiff by his supporting affidavit stated that the suit property is family/ancestral land which was registered in his name on 9<sup>th</sup> December 1967. That however on 26<sup>th</sup> April 2002 the defendant fraudulently changed the registration of that property into its own name. He stated that he was unaware of the change in registration until 12<sup>th</sup> August 2010. That his family has been in continuous and exclusive actual possession of the suit property and had fenced it and planted bananas, yams, coffee trees and other subsistence crops. That the defendant had never utilized the said property. The plaintiff stated without giving details that in 2001 the defendant had attempted to grab the suit property but was prevented by the plaintiff and his family. The plaintiff then deponed as follows:-

***11. That in early 2002, the defendant/respondent verbally implored me to exchange the suit land with the defendant's/respondent's alleged L.R. No. MWIMBI/CHOGORIA/2152, purportedly measuring three (03) acres in size.***

***12. That I verbally agreed only on condition, and promises by the defendant/respondent that I would be shown L.R. No. MWIMBI/CHOGORIA/2152 on the ground, confirm it was registered in the defendant's/respondent's name, ascertain that it indeed measured three (03) acres in size and that it was not occupied and/or cultivated by anybody.***

**13. That inexplicably, the defendant/respondent failed to fulfill the foregoing condition and honour its aforesaid verbal promises and did not approach me again.**

**14. That after investigations, I found out that L.R. No. MWIMBI/CHOGORIA/2152 is a public/community land which is far less than the promised three (03) acres, whereon stands a public cattle dip besides being cultivated by people unknown to me.**

**15. That when I realized that the defendant/respondent was not candid, I verbally informed its clerk that would not be amenable to the intended exchange of land principally because of the defendant's/respondent's dishonesty and fundamental material non-disclosure.**

The plaintiff proceeded to state that the defendant on 12<sup>th</sup> August 2010 forceably entered the suit property destroyed the plaintiff's fence and put up its own fence. That the defendant then continued to destroy the plaintiff's property and gave the plaintiff ten days notice to vacate the suit property. The application was opposed by the defendant. In the replying affidavit of the town clerk of the defendant it was stated as follows:-

**3. That the plaintiff has failed to disclose material facts relating to acquisition of the suit land by the council.**

**4. That records held by the council show that way back in 1996 that applicant wrote to the council requesting for exchange of the suit land-annexed and marked 'JMK1' is a copy of the letter dated 26<sup>th</sup> February 1996.**

**5. That the said application was duly considered and allowed as is shown by the annexed copy of extract of the relevant minutes marked 'JMK11'.**

**6. That the consent of the relevant land control board was sought and obtained as is shown by the annexed copies of the application and consent marked 'JMK111'.**

**7. That thereafter the land was duly transferred to the council in accordance with the procedure as is attested by the correspondence annexed hereto and marked 'JMKIV'.**

**8. That I believe that the land was freely transferred to the council by the plaintiff.**

**9. That the council on its part caused its land parcel NO. MWIMBI/CHOGORIA/884 to be sub-divided into land parcel Nos. MWIMBI/CHOGORIA/2152 and 2153 after which land parcel No. MWIMBI/CHOGORIA/2152 was transferred to the plaintiff annexed and marked 'JKMV' are copies of the mutation and register.**

**10. That the council took possession of the suit land and developed the same after having the plan obtained (sic) annexed and marked 'JKMVI' is a copy of the plan.**

**11. That the council proceeded to allocate the said stalls to its residents on completion of the process of balloting-annexed and marked "JMKVII' are copies of the letters of allotment.**

**12. That the said allottees took possession of the said stalls and are entitled to occupy the same so long as they discharge their obligations to the council.**

**13. That the plaintiff took possession of land parcel No. Mwimbi/Chogoria/2152 and we have not interfered with his occupation in any manner.**

**14. That no servants or agents of the council gave the applicant the alleged threats and the council would have no reason to do so.**

**15. That I believe that this suit is being driven by the sons of the plaintiff who have never appreciated their father's right to deal with the suit land.**

**16. That in 1997 the said sons filed Meru CMCC No. 167 against the plaintiff and the council**

- annexed and marked 'JMKVIII' are copies of the decree.*
- 17. That it is after the said suit was dismissed and the orders of inhibition removed that the said transfer was effected.**

The plaintiff filed a supplementary affidavit denying writing the letter requesting for the exchange of his land. The suit property is registered in the defendant's name. It is clear that the transaction between the plaintiff and the defendant for the exchange of the suit property with parcel number *Mwimbi/Chogoria/2152* was not supported by the sons of the plaintiff. The lack of support of that transaction is seen by the suit filed against their father the present plaintiff and the present defendant. That was in Meru CMCC No. 167 of 1997. If indeed the present plaintiff was not part and parcel of the transaction of the exchange of the suit property, one would have expected that it would have been him who would have filed Meru CMCC No. 167 of 1997. He however did not. Looking at the prayers that are sought in the plaint as reproduced in the beginning of this ruling one gets the impression as argued by the defence learned counsel that this suit is filed by the plaintiff's sons who are probably proxies for the plaintiff. Peculiarly in this region of Meru, it does seem that orders of *status quo* on the ground are interpreted to be injunctive orders. There are sometimes used to harass people out of the land. Bearing that in mind, and having considered the affidavit evidence the submissions by learned counsels, the orders that commend themselves to me are as follows:-

- 1. An order of inhibition is hereby issued over parcel number *MwimbiChogoria/501* until final determination of this suit or until further orders of this court.**
- 2. The other prayer of the Notice of Motion dated 17<sup>th</sup> August 2010 is dismissed.**
- 3. The orders issued by this court on 19<sup>th</sup> August 2010 for the maintenance of *status quo* over parcel number *Mwimbi/Chogoria/501* are hereby vacated.**
- 4. The costs of that Notice of Motion shall be in the cause.**

**Dated, signed and delivered at Meru this 13<sup>th</sup> day of April 2011.**

**MARY KASANGO**  
**JUDGE**