



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

LAND AND ENVIRONMENTAL LAW DIVISION

PETITION NO.61 OF 2011

**IN THE MATTER OF ARTICLE 35 OF THE CONSTITUTION OF KENYA (SUPERVISORY)
JURISDICITON PROTECTION OF THE INDIVIDUAL) HIGH COURT PRACTICE AND
PROCEDURE RULES 2006**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLE 35 OF THE**

**CONSTITUTION REGARDING RELEASE OF INFORMATION RELATING TO PLOT NO.
L.R.NO.209/9099**

**MARGARET MBIYU.....PETITIONER/
APPLICANT**

VERSUS

**MINISTER OF LANDS.....1ST
RESPONDENT**

**COMMISSIONER OF LANDS.....2ND
RESPONDENT**

**CHIEF LANDS REGISTRAR.....3RD
RESPONDENT**

RULING

1. Margaret Mbiyu (hereinafter referred to as the applicant) has petitioned this court under Article 35 of the Constitution of Kenya. The orders she is seeking reproduced verbatim from the petition are as follows:

(i) That the actions of the respondents of denying me the information contained in the parcel file of Plot No. L.R. No.209/9099 are unconstitutional for they contravene Article 35 of the Constitution.

(ii) That the respondents be ordered to supply to me within seven days of the date of the court order information regarding Plot No. L.R. No.209/9099 and in particular the registered owner of the said property and the history of the said ownership, that is to supply an official search on Plot No.209/9099.

(iii) Costs of this petition be provided for.”

2. Filed contemporaneously with the petition is an application by way of a chamber summons brought under certificate of urgency. The application is seeking an interim order that pending the hearing and determination of the petition, the respondent be directed not to register any transfer, alienation, Charge or mortgage of any other dealing affecting the suit property known as Plot No. L.R. 209/9099.

3. The application is based on grounds stated as follows:

(i) That the petitioner is an administrator of the estate of the late Hon. Mbiyu Koinange and which estate is the subject matter in Succession Cause NO.527 of 1981 and which estate is claiming ownership of plot No. L.R. No.209/9099, Nairobi.

(ii) That the petitioner has tried to carry out an official search on the said parcel property to no avail for the officers in the land registry claim that the file is lost.

(iii) That the petitioner is entitled to know the status of the said plot known as plot No. L.R. No.209/9099 as its provided for in the Constitution under Article 35 (the right to information).

(iv) That there is real fear that transactions involving the suit property might take place changing the status of the suit property Plot No. L.R. No.209/9099 hence the need for the conservatory order so that the suit property can be preserved.

4. Despite being served with the application and a hearing notice, none of the respondents filed any response to the application.

5. In support of the application, the applicant has sworn an affidavit in which she explains that she is the administratrix of the estate of the Late Hon. Mbiyu Koinange. The estate is claiming ownership of the suit property. Efforts by the applicant to obtain information from the respondents to confirm the true status of the suit property have been frustrated. The applicant fears that unless the interlocutory orders are granted the suit property may be alienated to the detriment of the beneficiaries of the estate of the deceased.

6. The application not having been opposed, the applicant's averments stand unchallenged. The issue of concern however is whether this court has jurisdiction to grant the orders sought by the applicant. The applicant has not indicated the specific provisions under which her application is anchored. Nonetheless, it is apparent that the order sought by the applicant in the chamber summons dated 5th April, 2011, is in effect an order of interlocutory injunction restraining the respondents from registering any transaction

involving the suit property. The respondents are all government agents. An order of interlocutory injunction issued against them will be in effect an order of injunction against the government. The remedy of injunction is however not available against the government. This is evident from Section 16 of the Government Proceedings Act which states as follows:

“16(1) In any civil proceedings by or against the Government the court may, subject to the provisions of this Act, make any order that it may make in proceedings between subjects, and otherwise give such appropriate relief as the case may require:

Provided that-

(i) where in any proceedings against the Government any relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(ii) in any proceedings against the Government for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property, or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government.

7. Thus, it is evident that the applicant is not entitled to the orders sought. Consequently, I find that the chamber summons dated 5th April, 2011 is incompetent. It is accordingly struck out, and the interim orders issued on 7th April, 2011 is hereby discharged.

Dated and delivered this 14th day of June, 2011

**H. M. OKWENGU
JUDGE**

In the presence of: -

Onyango H/B for Gikandi for the petitioner/applicant

Advocate for the respondents absent

B. Kosgei - Court clerk