



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL NO. 43 OF 2011

CHARLES KINYUA BERNARD.....PLAINTIFF

VERSUS

RUTH KAARI NTWIGADEFENDANT

RULING

The appellant in Notice of Motion brought under Section 3 and Section 3A of Civil Procedure Act and Section 128 of the Registered Land Act(Cap.300) seeks the following orders:-

- 1. That an inhibition order do issue against parcel L. R. Mwimbi/Chogoria/376 inhibiting all dealings with the said land pending the hearing and determination of this application or until further orders of this court.***
- 2. That this order be served upon the Land Registrar for compliance.***
- 3. Costs of this application be provided for.***

The application is supported by affidavit of Ruth Kaari Ntwiga and based on grounds in the body of the Notice of Motion. The grounds upon which the application is based on is as follows:-

(a)The applicant sued respondent claiming land L. R. Mwimbi Chogoria/376 in PMCC 64 of 2010 claiming the same to have been fraudulently registered in respondent's name.

(b)That the applicant is apprehensive that the respondent may dispose of the suit premises by way of sale and if the respondent is not inhibited the applicants suit may be rendered nugatory.

(c)That there is need to preserve the suit land by maintaining status quo pending the hearing and determination of the application and the appeal.

(d)That an inhibition order will be most appropriate order in circumstances of this case.

(e)That the respondent stand to suffer no prejudice if an inhibition order is issued by Honourable court.

The applicant in her affidavit dated 27th October, 2011 states that she sued the respondent as the respondent had fraudulently caused his registration over L.R. Mwimbi/Chogoria/376. That the suit filed by the respondent is PMCC 64 of 2010 from which this appeal is preferred. The suit has not been heard and determined. The applicant is apprehensive if the orders sought are not granted the respondent may

sell the suit premises rendering the applicant's suit nugatory.

The respondent was served with the application and hearing notice. The respondent did file Replying Affidavit but failed to serve the same within the prescribed period and the same was expunged for from the record on applicant's Counsel application under Order 51 rule 14(2) of Civil Procedure Rules. The application proceeded then ex parte under Order 51 Rule 14(4) of Civil Procedure Rules.

The lower court suit PMCC 64 of 2010 between the applicant and the respondent is still pending. The suit premises is Mwimbi/Chogoria/376; which is registered in the name of the respondent. I note since the respondent filed this appeal on 12/4/2011 he has not taken any steps to prepare record of appeal. That there is nothing stopping the respondent from disposing of the suit premises. The applicant is apprehensive if inhibition order is not issued the respondent may dispose of the suit premises complicating the suit and rendering the suit nugatory. The suit premises ought to be preserved by maintaining status quo through registration of an inhibition.

I am therefore in the interest of justice and the interest of preserving the suit land and ensuring the applicant's suit is not rendered nugatory granting the orders sought in terms of prayer 1, 2 and 3 as follows:-

1. ***That an inhibition order be and is hereby issued against land parcel L. R. Mwimbi/Chogoria/376 inhibiting all dealings with this land pending hearing and determination of this appeal.***
2. ***That this order be and is ordered to be served upon the District Land Registrar for compliance.***
3. ***That the respondent did not contest this application I order that costs be in the cause.***

DATED, DELIVERED AT MERU THIS 18TH DAY OF NOVEMBER, 2011

J. A. MAKAU
JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:-

1. Mr. Mwirigi hb for I.C.Mugo for applicant
- 2..... advocate for the respondent

J. A. MAKAU
JUDGE