



**Mutiso (Suing as the Legal Representative and Administrator of the Estate of Philip Mutiso Munguti (Deceased) pursuant to letters of administration ad litem dated 26th April issued in Mavoko CMCC Succession Cause No. 44 of 2020) v Njoroge & 3 others (Environment & Land Case E052 of 2021) [2022] KEELC 13534 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 13534 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E052 OF 2021**

**A NYUKURI, J  
SEPTEMBER 28, 2022**

**BETWEEN**

**MONICA WAYUA MUTISO ..... APPLICANT  
SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF  
THE ESTATE OF PHILIP MUTISO MUNGUTI (DECEASED) PURSUANT TO  
LETTERS OF ADMINISTRATION AD LITEM DATED 26TH APRIL ISSUED IN  
MAVOKO CMCC SUCCESSION CAUSE NO. 44 OF 2020**

**AND**

**NANCY NDUATA NJOROGE ..... 1<sup>ST</sup> RESPONDENT  
MARIETTA MBULA NZIOKI ..... 2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
REGISTRAR OF TITLES NAIROBI CENTRAL REGISTRY. 4<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction**

1. Vide an application dated May 19, 2021, the plaintiff/applicant sought for the following orders;
  - (a) Spent.
  - (b) Spent.
  - (c) That pending inter partes hearing of this suit, this honourable court be pleased to make an order directed at the registrar of titles Nairobi Central Registry to forbid all dealings or further registration of any entries in the register over LR 12715/162.



- (d) That costs of this application be borne by the defendants/respondents.
2. The application was supported by the grounds on its face as well as the affidavit sworn by the plaintiff/applicant on May 19, 2021. The applicant's case is that land parcel number LR No 12715/162 (suit property) belong to her late husband one Philip Mutiso Munguti whose estate the plaintiff is the administrator thereof, by virtue of being the widow of the deceased.
  3. The plaintiff further stated that her daughter one Thecla Ngina Mutiso granted power of attorney to Marrieta Mbula Nzioki the 2<sup>nd</sup> defendant herein, in 2017, although the said power of attorney was unregistered. She also stated that the purpose of granting the 2<sup>nd</sup> defendant the power of attorney was to enable her assist Thecla Ngina have the suit property registered in the name of the deceased. That it is on this understanding that Thecla Ngina Mutiso handed over the copy of the identity card of the deceased, the original allotment letter, original share certificate, copies of the plaintiff's identity card and identity cards of all her children and the original letter from the area chief to the 2<sup>nd</sup> defendant.
  4. The plaintiff contends that the 2<sup>nd</sup> defendant in cahoots with the 4<sup>th</sup> defendant fraudulently transferred the suit property to the 1<sup>st</sup> defendant one Nancy Nduta Njoroge and did so by backdating the transfer to the 1<sup>st</sup> defendant to show that the transfer was done on October 10, 2011 at a consideration of Kshs 12,000,000/-.
  5. The 1<sup>st</sup> defendant was served by substituted service on July 9, 2021, pursuant to the order of this court made on June 24, 2021 allowing substituted service. Although duly served, the 1<sup>st</sup> defendant neither entered appearance nor filed response to the application herein. On the other hand, the Attorney General entered appearance for the 3<sup>rd</sup> and 4<sup>th</sup> defendants but did not file any response to the application herein.
  6. The 2<sup>nd</sup> defendant filed a replying affidavit on November 2, 2021 opposing the application herein. It was her case that in 2017, she was asked by Thecla Ngina Mutiso to assist in processing the title for LR No 12715/62. That the latter availed to her the original allotment letter, receipts, a letter from the area chief, the deceased's death certificate and copies of identity cards for the beneficiaries of the deceased's estate. She further stated that she got a power of attorney from Thecla Ngina Mutiso although the same was not registered. It was also her evidence that later, Thecla Ngina Mutiso provided her with a copy of the title to the suit property which indicated that the suit property was registered in the deceased's name on September 14, 1988 and later transferred to Peter Mburu Njoroge and Samura Kenya Ltd; and subsequently transferred to Nancy Nduta Njoroge on October 10, 2011.
  7. The 2<sup>nd</sup> defendant denied ever meeting Nancy Nduta Njoroge or ever having known her. She further denied committing any fraud in respect of the suit property. It was her position that she did not effect any dealings on the suit property as Thecla Ngina Mutiso did not have the necessary funds to enable her deal. She also denied having been summoned by the DCI, Athi River in relation to the suit property and prayed that the application herein and the suit against her be dismissed for being malicious, frivolous and made in bad faith.
  8. On October 19, 2021, the court directed that the application be canvassed by way of written submissions. On record are the applicant's submissions filed on December 7, 2021. No submissions were filed by the defendants/respondents.

### **Submissions**

9. Counsel for the plaintiff submitted that the applicant had met the threshold for grant of the prayer of injunction sought. Reliance was placed on order 40 rule 1(a) of the *Civil Procedure Rules* as well



as the case of *Giella v Casman Brown & Co Ltd* [1973] EA, for the proposition that to succeed in an application for temporary injunction, an applicant must demonstrate a *prima facie* case with chances of success, that the applicant shall suffer irreparable injury that may not be compensated in damages if the injunction is declined and that the balance of convenience should be resorted to where the court is in doubt.

10. It was submitted for the applicant that the applicant had demonstrated that she was the legal representative of the estate of the late Philip Mutiso Munguti and that the deceased was the sole proprietor of the suit property and that the deceased never sold the suit property during his lifetime. Counsel relied on section 26 of the [Land Registration Act](#) for the proposition that a certificate of title is prima facie evidence that the proprietor is the absolute and indefeasible owner. Counsel argued that although the law protects registration of title, the same may be impeached where the title is obtained by fraud or misrepresentation, where the registered proprietor was party to such fraud or misrepresentation or where the certificate was acquired illegally, unprocedurally or through a corrupt scheme. On that basis, counsel stated that the applicant had demonstrated a *prima facie* case.
11. On the question as to whether the applicant had demonstrated that she stands to suffer irreparable injury incapable of being compensated by an award of damages, counsel argued that there is a real risk that the suit property may further be transferred to third parties to defeat the ends of justice if an injunction is not granted.
12. Further, counsel observed that the balance of convenience tilted in favour of the applicant and sought for the application to be allowed.

### **Analysis and Determination**

13. Having carefully considered the application, the supporting affidavit, the replying affidavit and the submissions, the sole issue that emerges for consideration is whether the applicant has met the threshold for grant of the orders sought.
14. The applicant has sought for an order forbidding the registration of any entries in the register of title LR No 12715/162. The same is in the nature of an inhibition and/or temporary injunction. Sections 68 and 69 of the [Land Registration Act](#) provides for the power of the court to grant inhibition and the effect of an inhibition respectively as follows;

“ 68

- (1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or change.
- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or change affected shall be sent to the Registrar, who shall register it in the appropriate register.
- (3) An inhibition shall not bind or affect the land, lease or change until it has been registered.

69. So long as an inhibition remains registered, any instrument that is inconsistent with the inhibition shall not be registered.”



15. An inhibition therefore is a temporary order stopping the registration of dealings in the land for a specific period of time, till the occurrence of a particular event or until a further order. The effect of an inhibition is to stop the registration of any registrable instrument that is contrary to the inhibition. In essence, an inhibition ensures the maintenance or preservation of status quo of a title so that no new rights or interests are created or registered on the title.
16. In the context of the instant suit, the plaintiff has sought to forbid registration of any dealings on the suit property pending hearing of this suit. Therefore, he seeks for temporary orders stopping the registration of further dealings on the suit property.
17. Principles governing grant of temporary injunctions are well settled. As was held in the case of *Giella v Cassman Brown Co Ltd* [1973] EA 358, a temporary injunction can only issue where the claimant demonstrates a prima facie case with a probability of success, that they will suffer irreparable injury that may not be compensated by way of damages if the injunction is declined and that the court is in doubt it ought to decide on the balance of convenience.
18. In the instant suit, the plaintiff has stated that the suit property belongs to Philip Mutiso Munguti now deceased, who was her husband and whose estate she is the administrator. Her main complaint is that the suit property was transferred to the 1<sup>st</sup> defendant fraudulently and backdated as having been transferred on October 10, 2011, which actions were unlawfully done by the defendants. According to the applicant, the suit property was registered in the name of the deceased in 1988 and that at no time did he sell the same to Nancy Nduta Njoroge. I have perused the applicant's annexure marked MWM -5 which is a certificate of title of LR No 12715/162. The same shows that the suit property was first registered in the name of Syokimau Farm Limited for a lease period of 99 years from November 1, 1983. Entry No 2 thereon shows that the title was transferred to Philip Mutiso Munguti on September 14, 1988. The last entry on the said title is entry No 3 showing that the said title was transferred to Peter Mburu Njoroge and Samura Kenya Limited as tenants in common in equal shares on May 17, 1990. I have also considered the applicant's annexure marked MNM -9, which is official search certificate showing that the suit property was transferred to Nancy Nduta Njoroge for a consideration of Kshs 12,000,000/- on October 10, 2011.
19. The 2<sup>nd</sup> defendant also attached a copy of the title to the replying affidavit which shows in entry No 2 that the deceased was registered as proprietor thereof on September 14, 1988 and entry No 3 shows that on May 17, 1990, the same was transferred to Peter Mburu Njoroge and Samura Kenya Ltd as tenants in common in equal shares. Entry No 4 shows that grant of letters of administration for the estate of Peter Mburu Njoroge were issued to Mungai Ngaruiya and John Karanja on October 10, 2011 as administrators of the estate of Peter Mburu Njoroge and entry No 5 on the title shows that the transfer to Nancy Nduta Njoroge was done on October 10, 2011. The 2<sup>nd</sup> defendant deponed that Thecla Ngina Mutiso is the one that gave her the copy of the title. On the other hand, the plaintiff deponed that they were unaware that the suit property was registered in the deceased's name and that the certificate of title was never collected by the deceased. She annexed the certificate of title without disclosing where she got it from, though she denied being aware of its existence.
20. Having considered the certificate of title, it is clear that the suit property was transferred to Peter Mburu Njoroge and Samura Kenya Limited on May 17, 1990. Though the plaintiff is aware of this fact, she has not levelled any complaint or challenge against the said transfer of the suit property to Peter Mburu Njoroge and Samura Kenya Limited. Her only complaint is that the transfer to Nancy Nduta Njoroge was done fraudulently on October 10, 2011, at a consideration of Kshs 12,000,000/- when infact the deceased did not sell the suit property to Nancy Nduta Njoroge. As the plaintiff has not challenged or faulted entry No 3 on the register being the transfer of the suit property to Peter Mburu Njoroge and



Samura Kenya Limited which happened before the transfer to the 1<sup>st</sup> defendant, her complaint has no basis, because the deceased could not be expected to have sold the land to the 1<sup>st</sup> defendant, when the land was already registered in the names of Peter Mburu Njoroge and Samura Kenya Limited.

21. In addition, although the plaintiff alleges to have been unaware that the suit property was transferred to the deceased in 1988, she does not disclose how she got possession of the title thereof. It is my finding that the applicant has not been forthright and has therefore come to equity with unclean hands.
22. The suit property was transferred from the deceased on May 17, 1990. The applicant filed this suit on May 24, 2021, which is 31 years after the suit property was transferred from the deceased. The applicant has not complained that the transfer done 31 years ago was done fraudulently.
23. The totality of the above is that I am not satisfied that the applicant has made out a *prima facie* case with chances of success to warrant grant of the orders sought. The applicant having failed to demonstrate a *prima facie* case with chances of success, it would be unnecessary proceed to interrogate the other elements for grant of temporary injunction.
24. In the premises, I find and hold that the application dated May 19, 2021 lacks merit and the same is dismissed with costs to the 2<sup>nd</sup> defendant.
25. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of;**

Mr. Ayieko for the Plaintiff/Applicant.

Mr. Kago for the 1<sup>st</sup> Respondent.

Mr. Nzuva for the 2<sup>nd</sup> Respondent.

Mr. Mwambonu for the 3<sup>rd</sup> and 4<sup>th</sup> Respondent.

Mr. Ondieki for the proposed 5<sup>th</sup> and 6<sup>th</sup> Respondents.

C/A- Josphine.

