



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

Civil Case 114 of 2006

M'RUTERE M'MWIRICHIA PLAINTIFF

VERSUS

LUKA KIMATHI PETER DEFENDANT

RULING

On 30th November, 2006 this court (Sitati,J) issued temporary orders of inhibition following an application by the applicant who is seeking that inhibition order be issued to restrain registration or any dealings in L.R.Kiirua/Naari/1437 until further orders. The application is premised on the grounds that the applicant is residing on the suit land and that the respondent is likely to alienate, dispose of or interfere with the suit land while the suit is pending.

The applicant has brought simultaneously with this application an Originating Summons in which he is seeking, among other reliefs, a declaration that he is entitled to the suit land by adverse possession.

The respondent has filed a replying affidavit in opposition to the application. The respondent contends that the present application is *res judicata* another one dated 26th February, 2001, being HCCC No.47 of 2001(O.S) in which an inhibition was issued and has not been lifted. That the respondent has applied for the withdrawal of the said inhibition as well as an order for the eviction of the applicant. I have considered these rival submissions.

It is not denied that on 6th March, 2001 the court issued an order of inhibition in Civil Suit No.47 of 2001(O.S). What is in dispute is whether or not Civil Suit No.47/2001(O.S) has been withdrawn and if so what happens to the inhibition issued in it.

The applicant has averred in the verifying affidavit that there is no other suit pending between himself and the respondent. The respondent on the other hand has maintained that the matter is still pending and that in fact he has filed an application seeking the removal of the inhibition. The respective averments have not offered a solution to the controversy. The applicant has not adduced any evidence that Civil Suit No.47/2001 was indeed withdrawn. The respondent has also failed to show that the suit is still pending and that in fact he has filed an application for the lifting of the inhibition. The parties ought to have annexed evidence to support their respective positions.

If as a matter of fact the suit is still pending then it follows that the inhibition order issued in it subsists and no instrument which is inconsistent with it can be registered. What is the position if the suit in which the inhibition was issued has been withdrawn?

Section 130 of the Registered Land Act provides the only circumstances when an inhibition may be

lifted. The Section provides as follows:

“130. The registration of an inhibition shall be cancelled in the following cases and in no others-

- (a) on the expiration of the time limited by the inhibition, or*
- (b) on proof to the satisfaction of the Registrar of the occurrence of the event named in the inhibition;
or*
- (c) on the land, lease, or charge being sold by a chargee, unless such sale is itself inhibited; or*
- (d) by order of the court.*

It was incumbent upon the applicant to show how the inhibition was cancelled. Withdrawal of the case *per se* does not automatically cancel inhibition unless in allowing the withdrawal the court expressly ordered the cancellation of the inhibition order. If that was not done, there ought to have been an application to court to lift the inhibition.

Cancellation of an inhibition order can only be on any one of the above four cases. The applicant has failed to demonstrate how the order of inhibition issued in civil suit No.47 of 2001(O.S) was cancelled.

In the result this application is dismissed with costs.

Dated and delivered at Meru this 2ND Day of March,. 2007

W. OUKO

JUDGE