

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Civil Case 76 of 2004

M'MURAA M'KIORONE ALIAS M'MURAA M'KIORONE.....PLAINTIFF

VERSUS

GACHIATA KIORONE ALIAS JOSEPH GACIETA DEFENDANT

RULING

The applicant was granted temporary inhibition orders against the respondent in this application. This ruling relates to interpartes arguments made before me on 29th March, 2007. It is the applicant's case that he gathered and registered land parcel No.Nyaki/Giaki/634 but caused the same to be registered in the name of the respondent, who is his younger brother.

That later the latter sub-divided the said parcel of land into 9 parcels, namely, Nyaki/Giaki/2528 to Nyaki/Giaki/2526. That the respondent has disposed of Nyaki/Giaki/2523 and Nyaki/Giaki/2524.

The applicant further states that since the filing of this suit the respondent has embarked on selling the rest of the parcels. It may be noted that the applicant is seeking in the main suit a declaration that the respondent is holding the suit land in trust for him (the applicant), and an order that the sub-division of the suit land was a nullity, among other reliefs.

The respondent has filed a replying affidavit in opposition to this application. He has maintained that the suit land is his, being the first registered owner. That the applicant has his own land separate from the suit land. The respondent says that in the circumstances, he cannot be a trustee of the applicant in respect of the suit land.

The applicant and the respondent are brothers. The applicant has explained in both this application and the plaint that he gathered, during land adjudication and consolidation, the suit land and since it was a policy of the allocating committee that those already with land should not be registered in the settlement scheme.

From what I understand the applicant to be saying, he opted to have the suit land registered in the name of the respondent to hold in trust for him.

In an application for inhibition orders, the applicant must establish his interest in the subject matter. He must also show that he stands to suffer irreparable loss not capable of compensation if inhibition is not ordered.

The applicant, in my view, has established that it is him who caused the suit land to be registered in the name of the respondent. Although the respondent maintains that he has no intention of disposing of the suit land, he has admitted that he has sub-divided it with the intention of distributing to his sons. He has, of course, not responded to the allegation that he has sold two parcels to third parties. Whatever the case any transfer of any of the parcels before the suit herein is heard will prejudice the applicant.

For these reasons it is hereby ordered that the order of inhibition shall issue pending the hearing and determination of this suit.

Costs will be in the cause.

DATED AND DELIVERED AT MERU THIS 18th DAY OF May, 2007

W. OUKO

JUDGE