



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 21 OF 2020

MILLICENT WAIRIMU KATHIGI.....PLAINTIFF

VERSUS

PETER KIMANI.....DEFENDANT

RULING

1. Before me is an application dated 6.7.2020 filed by the plaintiff who is seeking orders of injunction to restrain the defendant from in any way dealing with land parcel no. Nyaki/Mulathankari/148 (the suit land). She is also seeking an order of inhibition in respect of the said suit land.
2. The application is premised on the grounds set out on the face of it and in the applicants affidavit, where she contends that she is in exclusive possession of the suit land.
3. The application is opposed vide a replying affidavit of the respondent who contends that the application falls short of the basic bench mark for grant of orders of injunction and inhibition.
4. On 17.11.2020, this court discharged the earlier orders given on 8.7.2020. The court also expunged the applicant's submissions filed contrary to the orders given on 8.10.2020.
5. Has the applicant established a prima facie case to warrant the issuance of injunction? In **Mrao vs First American Bank of Kenya Ltd & 2 others (2003) KLR 125**, the court stated that:

“In civil case, it is a case in which on the material presented to the court, a tribunal property directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

6. In paragraph 6 of her supporting affidavit, the applicant avers that she has constructed her homestead on the suit property. This averment has not been rebutted by the respondent. I am therefore inclined to find that the applicant has established a prima facie case and that she stands to suffer irreparable damage which cannot be adequately compensated by an award of damages. Thus the prayer for injunction is merited.
7. On inhibition, section 68 (1) of the Land Registration Act provides that:

“The court may make an order (herein after referred to an inhibition) inhibiting for a particular time or until occurrence of a particular event or generally until further order, the registration of any dealing with any land or charge”.

8. Thus in essence an inhibition is meant to preserve the land so that the same is not alienated. Considering that the claim herein is that of adverse possession, it is necessary to ensure that the land is not alienated during the subsistence of the suit as this may convolute the dispute further. In the circumstances, I will allow the prayer for inhibition.
9. In the final analysis, the court allows the application dated 6.7.2020. However, both orders of injunction and inhibition shall be in force for a period of **one year only**. The costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF FEBRUARY, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 17.11.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE