



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 28 OF 2020**

**JOSEPH NDERITU WANJOHI.....PLAINTIFF**

**-VERSUS-**

**NORTH TERU FARMERS CO. LTD.....1<sup>ST</sup> DEFENDANT**

**PETER NDEGWA KAMOCHU..... 2<sup>ND</sup> DEFENDANT**

**JOHN GAITHO GATUGUTA.....3<sup>RD</sup> DEFENDANT**

**WANYOIKE NJOORI GIKURI.....4<sup>TH</sup> DEFENDANT**

**JOYCE NJOKI MATHENGE.....5<sup>TH</sup> DEFENDANT**

**DANIEL GITONGA KIMONDO.....6<sup>TH</sup> DEFENDANT**

**DANIEL MURAGE NGUITUI.....7<sup>TH</sup> DEFENDANT**

**CHARLES GICHUHI NGARI..... 8<sup>TH</sup> DEFENDANT**

**EUNICE MURINGI KIHIA.....9<sup>TH</sup> DEFENDANT**

**NANCY WANGECI MAINA.....10<sup>TH</sup> DEFENDANT**

**RULING**

**A. INTRODUCTION**

1. Vide a plaint dated 30<sup>th</sup> July, 2020 the Plaintiff sued the Defendants seeking the following reliefs:

(a) An order of inhibition be issued inhibiting the registration of any dealings over all those parcels of land known and described as Title Numbers Nanyuki/Marura Block 5/132, 284, 266, 136, 210, 255, 124, 65, 13, 372, 417, 71, 23, 165, 87, 18, 44, 100, 74, 200, 111, 204, 91,178, 237, 130, 70, 63, 140, 227, 96, 226, 90, 180, 179, 199, 27 220 31, 37, 305, 416, 208, 127, 12, 24, 189, 117, 221, 83, 182, 174, 207, 247, 240, 5, 244, 419, 10, 2, 49, 202, 370, 108, 28, 164, 29, 157, 201, 80, 415, 97, 22, 223, 222, 264, 286, 25, 235, 42, 232, 39, 17, 241, 32, 15, 44, 303, 24, 79, 117, 84, 69, 260, 69, 420, 262, 256 &170 (ERERI) and the Land Registrar Laikipia County be directed to register the said inhibition against the aforesaid parcels of land.

(b) Any other and further orders as this Honourable Court may deem just in the circumstance.

(c) Costs of the suit.

2. It was pleaded in the plaint that the Plaintiff was the founding director and shareholder of the 1<sup>st</sup> Defendant (*the company*) which was incorporated in 1971 and the only surviving director. The Plaintiff further pleaded that he was the chairman of the board of directors of the company until 2014 when the 2<sup>nd</sup> – 10<sup>th</sup> Defendants (*the Defendants*) forcibly took over the operations of the company.

3. The Plaintiff contended that the Defendants were in the process of offering for sale and disposing of the suit properties belonging to the company whilst excluding the rightful beneficiaries including himself. The Plaintiff was apprehensive that unless the reliefs sought were granted, the rightful beneficiaries of the suit properties shall suffer substantial and irreversible loss hence the suit.

#### **B. THE PLAINTIFF'S APPLICATION**

4. Simultaneously with the filing of the suit the Plaintiff filed a notice of motion dated 30<sup>th</sup> July, 2020 brought under **Section 68 of the Land Registration Act 2012, Sections 1A, 1B and 3A of the Civil Procedure Act (Cap. 21), Order 40 Rule 1 of the Civil Procedure Rules, Article 159 of the Constitution of Kenya, 2010 and all enabling provisions of the law** seeking an order of inhibition prohibiting any further dealings with the suit properties pending the hearing and determination of the suit.

5. The said application was based on the grounds set out on the face of the motion which were essentially the same grounds set out in the plaint dated 30<sup>th</sup> July, 2020. It was contended that the Defendants had illegally taken over the operations of the company and are in the process of advertising the suit properties for sale to members of the public to the detriment of the rightful shareholders and beneficiaries. The application was supported by the Plaintiff's own affidavit sworn on 30<sup>th</sup> July, 2020 which reiterated and expounded upon the grounds set out in the motion.

#### **C. THE DEFENDANTS' RESPONSE**

6. The 1<sup>st</sup> – 10<sup>th</sup> Defendants filed a replying affidavit sworn by John Gaiho Gatuguta on 17<sup>th</sup> August, 2020 in opposition to the said application. It was contended that the Plaintiff and his leadership team were voted out by shareholders of the company on 24<sup>th</sup> January, 2014 after which the new office bearers, the 2 – 10<sup>th</sup> Defendants, were duly registered by the Registrar of Companies. It was denied that the Defendants had forcibly or illegally taken over the management of the company.

7. The Defendants denied that they had offered for sale any of the suit properties to members of the public and challenged the Plaintiff to provide evidence thereof. It was contended that since being voted out of office the Plaintiff had continued to masquerade as the chairman of the company and that he had sub-divided and sold some of the company properties after being voted out of office.

8. In particular, it was contended that the Plaintiff had sub-divided *Title No. Nanyuki/Marura Block 5/1271 (ERERI)* into two portions one of which he transferred to his wife whereas he sold the other portion with the help of his daughter. It is further contended that as a result of the Plaintiff's said fraudulent action the Plaintiff and his daughter were facing criminal charges before Magistrates' Court at Nanyuki.

9. The Defendants further stated that the Plaintiff was illegally operating a parallel company office at Nanyuki despite his ouster and that due to his illegal activities he had not come to court with clean hands hence he was entitled to the interim orders sought. The court was consequently asked to dismiss the application with costs.

#### **D. DIRECTIONS ON SUBMISSIONS**

10. When the application was listed for directions on 30<sup>th</sup> July, 2020 it was directed that the same shall be canvassed through written submissions. The parties were also given timelines for filing responses and submissions. The record shows that the Plaintiff filed his submissions on 2<sup>nd</sup> November, 2020 whereas the Defendants filed theirs on 5<sup>th</sup> February, 2021.

#### **E. THE ISSUES FOR DETERMINATION**

11. The court has considered the Plaintiff's notice of motion dated 30<sup>th</sup> July, 2020 together with the supporting affidavit and annexures thereto, the Defendants' replying affidavit in opposition thereto as well as the submissions on record. The court is on the opinion that the following issues arise for determination herein:

(a) *Whether the Plaintiff has made out a case for the grant of the order of inhibition.*

(b) *Who shall bear the costs of the suit.*

#### **F. ANALYSIS AND DETERMINATION**

(a) **Whether the Plaintiff has made out a case for the grant of an order of inhibition**

12. The court has considered the material and submissions on record on this issue. The application is essentially based upon **Section 68(1) of the Land Registration Act, 2012** which stipulates as follows:

**“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 charge”.

13. The Plaintiff relied, *inter alia*, upon the case of **Dorcas Muthoni and 2 others v Michael Ireri Ngari [2016] eKLR and Benson Mwaniki Njuki and 16 Others v Henry Mkopo Nguta and 2 Others [2016] eKLR** in support of the application. It was submitted that an order of inhibition is akin to an order of temporary injunction intended to preserve the suit property pending resolution of a dispute at the trial.

14. The Defendants, on the other hand, submitted that the Plaintiff had failed to satisfy the requirements for granting the order of inhibition since he had not tendered evidence of intended sale or disposition of the suit properties. The Defendants relied on the cases of **Joseph Mumita Kipees (suing as legal representative of the estate of Moses Kisento) v Nteri Merik Obo Kipaika and 2 Others [2014] eKLR and Stringer Mzungu Lumwe and Another v Shida Tuji Tsuma and 2 Others [2020] eKLR** in opposition to the application..

15. The court has considered the material and submissions on record. The court has noted that all the authorities cited by the parties require that an applicant must demonstrate good grounds to warrant the issuance of such an order. The applicant must also demonstrate the risk of alienation or disposal of the suit property before the trial of the action.

16. In the case of **Joseph Mumita Kipees (supra)** it was held, *inter alia*, that:

**“The Applicant has alleged that the 1<sup>st</sup> Defendant intends to sell the suit land. There is no evidence of that allegation. Under Section 68(1) of the Land Registration Act, the court has power to grant inhibition orders against a suit land restricting registration of any dealing with the suit land for a particular period or until the occurrence of a particular event. The courts have severally held that in an application for orders of inhibition the applicant has to satisfy the court that:**

**(a) That the suit property is at risk of being disposed off or alienated or transferred to the detriment of the applicant unless preservatory orders of inhibition are issued.**

**(b) That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.**

**(c) That the applicant has an arguable case.”**

17. The court has considered the material on record but it is far from satisfied that the Plaintiff has made out a good case for the grant of an order of inhibition. The Plaintiff has completely failed to tender any evidence of intended sale or disposal of the suit properties. On the contrary, the material on record shows that it was the Plaintiff who had sub-divided company property and attempted to alienate it after his ouster from office. It would further appear that the Plaintiff is currently facing criminal charges in connection with such fraudulent dealings with company property. It is noteworthy that the Plaintiff did not file any further or supplementary affidavit to respond to the issue of the alleged fraud and the criminal charges he is facing.

18. The court is also not satisfied that the 2 – 10<sup>th</sup> Defendants forcibly took over the management of the company as alleged by the Plaintiff. The material on record indicates that the Defendants were elected and duly registered as office bearers by the Registrar of Companies. The Registrar rejected the returns by the Plaintiff on the basis that his meeting was not properly

convened and accepted the Defendants’ registration as the duly elected officials. It would thus appear that the Plaintiff was out to deliberately mislead the court on the alleged forcible takeover whereas he knew that the Registrar had accepted and endorsed the Defendants’ election. Accordingly, the 1<sup>st</sup> issue is answered in the negative.

***(b) Who shall bear costs of the application***

19. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to **Section 27 of the Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See **Hussein Janmohamed & Sons Vs Twentsche Overseas Trading Co. Ltd [1967] EA 287**. The court finds no good reason why the successful litigants should not be awarded costs of the application. Accordingly, the Defendants shall be awarded costs of the application.

**G. CONCLUSION AND DISPOSAL**

20. The upshot of the foregoing is that the court finds no merit in the Plaintiff’s notice of motion dated 30<sup>th</sup> July, 2020. Accordingly, the same is hereby dismissed with costs to the 1<sup>st</sup> – 10<sup>th</sup> Defendants.

It is so ordered.

**RULING DATED AND SIGNED IN CHAMBERS AT NYERI THIS 10TH DAY OF MARCH, 2021** and delivered via Microsoft Teams platform in the presence of Mr. Magua for the Plaintiff and Ms Gichama holding brief for Mr. Wachira for the Defendants.

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**HON. Y. M. ANGIMA**

**JUDGE**