



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**PETITION NO. 2 OF 2018**

**IN THE MATTER OF ARTICLES 19, 22, 23, 40, 47, 50 & 64 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF THE GOVERNMENT LANDS ACT (REPEALED) & TRUST LAND ACT**

**AND**

**IN THE MATTER OF NATIONAL LAND ACT, 2012**

**AND**

**IN THE MATTER OF NATIONAL LAND COMMISSION ACT**

**AND**

**IN THE MATTER OF KENYA GAZETTE NOTICE NO. 6334**

**AND**

**IN THE MATTER OF PURPORTED REVOCATION OF TITLE**

**BETWEEN**

**EDWARD MUGO .....PETITIONER/APPLICANT**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF KIRINYAGA .....2<sup>ND</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION.....3<sup>RD</sup> RESPONDENT**

**RULING**

By a Notice of Motion brought under certificate of urgency dated 11<sup>th</sup> January 2020, the Applicant sought the following orders:-

**1. Spent.**

**2. That the Honourable Court be pleased to grant leave to the firm of R. MUTHIKE MAKWORO & CO. ADVOCATES to come on record for the Petitioner/Applicant in place of the firm of WANGECHI MUNENE & CO. ADVOCATES.**

**3. That the Honourable Court be pleased to order the removal of Entry Number 7 in the register of land parcel No. INOI.KERUGOYA/250/275 by the Land Registrar Kirinyaga County.**

**4. That this Honourable Court be pleased to grant an injunction against the Respondents, their agents and/or servants restraining them from interfering with the Applicant's use, possession and occupation over land parcel No. INOI/KERUGOYA/250/275 pending the hearing and determination of this application.**

**5. That the Honourable Court be pleased to grant an injunction against the Respondents, their agents or servants restraining them from interfering with the Applicant's use, possession and occupation of land parcel No. INOI/KERUGOYA/250/275 pending the filing, hearing and determination of the intended appeal.**

**6. That the costs of this application be provided for.**

The application is premised on six grounds as shown in the body of the Notice of Motion and an affidavit sworn by Edward Mugo on 11th January 2021.

**Summary of Facts**

The matter involves the ownership of a parcel of land known as parcel No. INOI/KERUGOYA/250/275 where this Honourable Court entered judgment in favour of the petitioner/applicant on 11th October 2019. In the said judgment, a declaration was made to the effect that Gazette Notice No. 6334 dated 6th June 2001 purporting to revoke the petitioner's title to the suit property comprised in title No. INOI/KERUGOYA/250/275 is contrary to *Article 40 and 47 of the Constitution* and is therefore null and void. The Court directed the Land Registrar of Titles to rescind and reverse the revocation of certificate of title in respect of the suit property herein as published in the said Gazette Notice No. 6334 dated 6th June 2001. The Court also granted an order of permanent injunction restraining the respondents or anybody acting under them from alienating the petitioner/applicant's parcel of land comprised in title No. INOI/KERUGOYA/250/275 or in any manner interfering with the petitioner/applicant's possession of the same.

According to the applicant, the 2nd respondent was dissatisfied with the judgment of the Court and filed a Notice of Appeal on 22nd May 2020. He also stated that without any reasonable and justifiable cause, the 2nd respondent caused the said Notice of Appeal to be entered in the land register of land parcel No. INOI/KERUGOYA/250/275 as Entry No. 7. He argued that the effect of the above mentioned entry No. 7 in the land Register has prohibited him from enjoying the fruits of the judgment issued and the rights of use, possession and occupation as a proprietor of the same. The applicant further contends that the action by the 2nd respondent is a violation of the orders given by this Court where it had restrained the respondent from interfering, alienating the petitioner/applicant's suit property or in any manner whatsoever interfering with his possession of the same. The applicant further contends that the 2nd respondent has not filed an application for stay of execution of the judgment before this Court or the appellate Court and therefore they have no right to interfere with his right to enjoy the fruits of the judgment.

Despite service of the said application, the respondent failed to respond either by way of grounds of opposition or a replying affidavit. After satisfying itself that the respondents were indeed served and there being no response filed in opposition thereto, the Court allowed the application to proceed undefended.

**Legal Analysis and Disposition**

I have considered the Notice of Motion and the depositions by the applicant given on oath. This Court rendered itself on this petition regarding the manner in which the 2nd respondent purported to revoke the applicant's certificate of title in respect of the suit property parcel No. INOI/KERUGOYA/250/275. The Court also issued a permanent injunction restraining the respondents from interfering with the applicant's use, possession and occupation of the suit property.

The 2nd respondent expressed her dissatisfaction with the judgment of the Court and filed a Notice of Appeal to the appellate Court vide a Notice dated 13th May 2020. If the 2nd respondent was under any reasonable apprehension that the intended appeal was going to be rendered nugatory in any manner before the appeal is heard and determined, she was at liberty to approach the Court under **Order 42 Rule 6 Civil Procedure Rule** for stay pending appeal. The manner in which the 2nd respondent registered the Notice of Appeal against the suit property is not known under any of our laws and is a fragrant disobedience of the judgment and decree of this Honourable Court restraining them from interfering with the applicant's enjoyment of his right to property over the suit land as guaranteed under the Constitution of Kenya 2010 and the applicable laws.

The upshot of my analysis herein above is that the Notice of Motion dated 11th January 2020 is merited and the same is hereby allowed as prayed with costs. It is so ordered.

**READ, DELIVERED physically and SIGNED in open Court at Kerugoya this 5<sup>th</sup> day of March, 2021.**

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**E.C. CHERONO**

**ELC JUDGE**

In the presence of:-

1. Mrs Makworo for the Applicant
2. Kabuta – Court clerk.