



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO. E001 OF 2020

IN THE MATTER OF ARTICLES 40 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS

AND

IN THE MATTER OF VIOLATION AND/OR INFRINGEMENT OF THE PETITIONERS

CONSTITUTIONAL RIGHTS UNDER ARTICLE 19, 20, 21, 22, 23, 35, 40, 47 AND 165 OF

THE CONSTITUTION OF KENYA 2010

BETWEEN

SIMON MURUNGI.....1ST PETITIONER
LIVINGSTONE MAWIRA.....2ND PETITIONER
PURITY NGAITI.....3RD PETITIONER
HARMSHELD MUTHOMI.....4TH PETITIONER
OWEN MUGAMBI.....5TH PETITIONER
ANTHONY MURIITHI.....6TH PETITIONER
PURITY MWENDWA.....7TH PETITIONER
KELVIN GIKUNDI.....8TH PETITIONER
WITHFORD MWIRIGI.....9TH PETITIONER
PHYLIS GATWIRI.....10TH PETITIONER
BONFACE GITUMI.....11TH PETITIONER
ARMSTRONG KIOGORA.....12TH PETITIONER
ERA KIARUTHI.....13TH PETITIONER
PATRICK MWENDA.....14TH PETITIONER
CUTIS BUNDI.....15TH PETITIONER

PHINEAS KITHINJI.....16TH PETITIONER

VERSUS

THE LAND ADJUDICATION OFFICER

RUIRI/RWARERA.....1ST RESPONDENT

COUNTY GOVERNMENT OF MERU.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

JAPHET KAIL.....INTERESTED PARTY

RULING

1. Before me is a notice of motion dated 20/08/2020 brought pursuant to rules 20, 21, 32 and 64 of the Constitution of Kenya (*Supervisory jurisdiction and protection of fundamental rights and Freedoms of the individual*) *High Court Practice and Procedure Rules 2010*. The applicants/ petitioners seek orders of inhibition in respect of all the dealings in relation to land parcels numbers 5254/Ruiri/Rwarera/Adjudication and 5015/Ruiri/Rwarera Adjudication section and/or any other parcel number emanating from the 1st petitioner's original parcel number 816/Ruiri/Rwarera and registered separately pending hearing and determination of the application and the suit.

2. The applicants/ petitioners also seek orders of temporary Injunction restraining the interested party either by themselves their agent/assigns and/or any other person working under their instructions from interfering with the petitioners occupation and use of the land parcels numbers 5254/Ruiri/Rwarera/Adjudication and 5015/Ruiri/Rwarera Adjudication section and/or any other parcel number emanating from the 1st petitioner's original parcel number 816/Ruiri/Rwarera and registered separately pending hearing and determination of the application and the suit.

3. The applicants also seek costs as well as any other conservatory orders that is appropriate.

4. The application was duly served but only the Attorney General for the 1st and 3rd respondents have filed grounds of opposition. The 2nd respondent duly entered appearance and also filed a notice of appointment via the firm of M.D. Maranya advocates. They were also represented in court on 28.10.2020 and on 3.2.2021, but they have not filed any documents in opposition or in support of the application.

5. The case for the applicants is contained on the face of the application, the grounds in support thereof and the supporting affidavit of Simon Murungi, the 1st petitioner. The applicants contend that in 1978, the 1st applicant gathered land within Ruiri/Rwarera Adjudication Section and later demarcated it in his name and had it registered in the adjudication register as land parcel 816/Ruiri/Rwarera Adjudication measuring approximately 100 acres. He developed the land by constructing several permanent houses, cultivating and planting trees.

6. That the 1st interested party in his capacity as the area chief colluded with the land adjudication officer to subdivide his land parcel into 3 portions namely land parcels numbers 5254/Ruiri/Rwarera/Adjudication and 5015/Ruiri/Rwarera and later fraudulently, illegally and wrongfully transferred and allocated land parcels numbers 5254/Ruiri/Rwarera/Adjudication to the interested party. Further the 1st respondent has conspired to conceal the registered owner in a scheme to alienate his land.

7. The applicants aver that the 1st respondent's actions are illegal, unconstitutional and wrongful which actions have greatly compromised his fundamental rights and if the conservatory orders sought are not granted, the petitioners shall suffer irreparably and the petition shall be rendered nugatory.

8. The case for the 1st and 3rd 1st respondents is contained in the grounds of opposition dated 26/10/2020. It is averred that the application is misplaced, speculative and lacks merits as there is no evidence of the status of the adjudication section or the basis for challenging the 1st respondent's actions. The petitioners have not demonstrated that they have exhausted the elaborate procedures provided under the law and their invitation to rely on international instruments is also misplaced as there exists legislation that exhaustively and extensively governs the adjudication process.

9. I have carefully perused the application, the supporting affidavit and the grounds of opposition and the issues to be determined are;

a) Whether the petitioners have met the threshold for the grant of temporary injunction.

b) Should the court issue an order of inhibition?

c) Who should bear the cost of this application?

10. On the issue of injunction, I make reference to the relevant law as set out under order 40(1) (a) and (b) of the Civil Procedure Rules 2010, where it is stipulated that:-

"Where in any suit it is proved by affidavit or otherwise—

(a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders."

11. The conditions for consideration in granting an injunction were set out in **Giella vs Cassman Brown & Company Limited (1973) EA 358**; That an applicant must establish a prima facie case with likelihood of success. The applicant must also establish that he would suffer irreparable damage that will not likely be compensated by an award of damages. If the court shall be in doubt, it shall determine the case on a balance of convenience.

12. The law has developed in this area as was held in the case of **Jan Bolden Nielsen vs. Herman Phillipus Steya Also Known as Hermannus Phillipus Steyn & 2 Others (2012) eKLR** where Mabeya J stated as follows:-

'I believe that in dealing with an application for an interlocutory injunction, the court is not necessarily bound to the three principles set out in the Giella Vs Cassman Brown case. The court may look at the circumstances of the case generally and the overriding objective of the law.....'

For the law as always kept growing to greater levels of refinement, as it expands to cover new situations not exactly foreseen before.'

Even as those must remain the basis tests, it is worth adopting a further, albeit rather special and more intrinsic test which is now in the nature of general principle. The Court in responding to prayers for interlocutory injunctive relief, should always opt for the lower rather than the higher risk of injustice.....'

13. The petitioners claim that the land in question was gathered by the 1st petitioner and was eventually registered in his name as parcel 815/Ruiri/Rwarera. I have keenly perused all the documents availed by the applicants. None of them supports a claim of registration in form of an extract from the registration records or a relevant booklet to that effect.

14. In ground no. 2 in the application, it is averred that the 1st petitioner has constructed a permanent house on the suit land of which, the same averment is repeated in paragraph 3 of the supporting affidavit of the 1st applicant. To this end, he has availed annexure "SM 1" to buttress his claim. A perusal of that annexure SM1 reveals photographs, 24 in number, none of them show the existence of a house, permanent or otherwise.

15. This court has also taken into account that the land in question is in the ambit of adjudication process. As pointed out by the 1st and 3rd respondents, adjudication is transitory in nature and does not confer any absolute rights of proprietorship.

16. To this end, the legal regime governing the adjudication process is anchored primarily on two adjudication statutes that is the Land Consolidation Act and the Land Adjudication Act. There exist elaborate dispute resolution mechanisms set out under the aforementioned statutes. – see **Johnson Mbaabu Mburugu & Another vs Mathiu Nabea & 9 others (2020) eKLR**, **Tobias Achola Osindi & 13 others vs Cyprianus Otieno Ogola & 6 others (2016) eKLR**.

17. As pointed out again by the 1st and 3rd respondent, the applicants have not indicated the status of the land in the adjudication section. The court is therefore in the dark as to the actual nature and extent of the adjudication process so far undertaken in respect of the suit land.

18. The court is also aware of the mushrooming disputes emanating from Ruiri Rwarera adjudication section of which the court has on previous matters particularly in the case of **Johnson Mbaabu Mburugu & Another vs Mathiu Nabea & 9 others (2020) eKLR** and **Jacob Makunyu & 122 others vs District Land Adjudication and settlement Officer, Imenti central district & another, Gideon Muchui Arithi & 1836 others (applicants interested parties (2021) eKLR**, given directions that in so far as is practically possible, the matters be heard at the same time.

19. Against this background this court is reluctant to grant any orders which may shackle the duties of adjudication bodies who derive their mandate from the statutes. In the circumstances, I decline to grant the orders sought in the application dated 20.8.2020. Instead, I direct that this matter be mentioned alongside other Ruiri Rwarera matters amongst them **Meru Petition 35 of 2016** and **Meru petition 16 of 2016** on 12.5.2021.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF APRIL, 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 3.2.2021. 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