



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO.29 OF 2020**

**ELIZABETH NKATHA OMUSE & 21 OTHERS.....PLAINTIFF/APPLICANT**

**VERSUS**

**KENYA LINEN DRAPERS LTD.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**COUNTY LANDS ISIOLO COUNTY.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. Before me is a notice of motion dated 27/07/2020 brought pursuant to Section 68 of the Land Registration Act. The applicants are seeking an order of inhibition restraining any dealings whatsoever with land indicated as PDP NO. ISL/117/65/07-19 and/or Block Isiolo Township 5/70/FR NO. 508/98 (survey office) pending the hearing and final determination of this suit.
2. The application is based on the grounds on the face of it and on the supporting affidavit of Elizabeth Nkatha Omuse, Samuel Gikundi M'Rimberia and Joshua Miriti Roman, the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> plaintiffs respectively. I will highlight their averments in the same order as above.
3. The 1<sup>st</sup> plaintiff averred that her late father Douglas M'Kuura M'Rarama owned one acre of land within Mwangaza area which was referred to as PDP NO. ISL/117/65/07-19. That she was born on this one acre, which was gifted to her by her father during his lifetime. She later subdivided this parcel into seven portions No. 21-27 giving one to each of her 2 sons and 3 to her sister leaving herself with 2 portions, of which they have fully developed the 1 acre. She knows all the plaintiffs.
4. That in March, 2020, the plaintiffs agreed to get a government surveyor, Isiolo County to remark the boundaries to enable them follow up on the issuance of title deeds. The government surveyor directed them to a private surveyor (Geomeasures Surveyors Ltd) as they were short of staff due to the covid-19 pandemic. The private surveyor advised them that upon visiting Isiolo Land office, he discovered that the land was allocated to an entity known as Kenya Linen Drapers Ltd purportedly in 1992.
5. The applicants got a survey map from the survey office which showed that the said land was now known as Block 5/70 with an FR NO. 508/98. That during balloting for the plots within Mwangaza area in Isiolo, the said land was not subject to the balloting as it was own land, a fact acknowledged by the lands office. The 1<sup>st</sup> plaintiff does not know and she has never seen the 1<sup>st</sup> respondent. She urges the court to allow the application so as to prevent any changes pending the hearing and determination of this suit.
6. The 2<sup>nd</sup> plaintiff averred that he got 1 acre of the suit land from his elder brother in 1987 and he has all along lived on that land. In 1991, he and other original owners applied to the council to be officially allocated the land and the approval was done in a full council meeting. There was no balloting done as the suit land was recognized as already owned land.
7. The 2<sup>nd</sup> plaintiff was to later subdivide his land to N0s. 10, 11, 12A, 12B, 19 and 20, selling all the plots except 12A and 20.
8. The 2<sup>nd</sup> plaintiff avers that they got wind that there would be titling of land in Isiolo. This prompted them to get a surveyor to remark their boundaries. In the process, it emerged that the land was owned by the 1<sup>st</sup> respondent. The 2<sup>nd</sup> plaintiff contends that the 5 acres is owner occupied and built up and has never been up for allocation.
9. Having lived on the land all his life, he knows who owns what portion. He has proceeded to list his co applicants who gave him authority and the portions they own as captured in paragraph 12 of his affidavit. The claimants have all been following their titles from the land office Isiolo and have documents to that effect. They have also developed the land by putting up homes and other buildings.

10. The 5<sup>th</sup> plaintiff averred that he owned 1 acre being Nos. 36, 37, 38, 40 and 41 and sold the rest leaving himself with No. 38. He has lived on the land all his life and has put up permanent houses, and this is where he resides.

11. The application is opposed by the 1<sup>st</sup> respondent vide a replying affidavit dated 13<sup>th</sup> November 2020 sworn by Antony Kinyua, one of the directors of the 1<sup>st</sup> defendant/ respondent. He avers that they do not know the plaintiffs herein and are strangers to the alleged plot number PDP NO. ISL/117/65/07-19. That in 1993 they conducted a search and confirmed on the ground that there was an unsurveyed industrial plot within Isiolo township whereby they made an application and the land was allocated to them for the purpose of putting up a textile industry. There was no objection and after paying the requisite stand premium, plot rent and other rates, they were issued with a letter of allotment dated 26/02/1993. The plot was surveyed and the relevant PDP was done.

12. That in 2008 they wrote to the commissioner of lands requesting details for the amount of money payable to facilitate the issuance of certificate of lease, of which the county government of Isiolo granted the consent. After complying with all legal requirements they were issued with a beacon certificate and finally, they were also issued with a certificate of lease on 23/7/2019. They have been paying the property rates to the county government of Isiolo. Further, the 1<sup>st</sup> respondent contends that plot no. ISIOLO TOWNSHIP Block 5/70 does not belong to the plaintiffs as the latter do not possess certificates of leases, so they have no rights of ownership over the plot.

13. The 1<sup>st</sup> respondent also states that the plaintiffs have not suffered loss or damage, while they (1<sup>st</sup> respondents) stand to suffer irreparable loss and damage if they are restrained from utilizing the plot and pray that the application be dismissed with costs as it lacks merits.

14. The applicants filed a further affidavit in response to the replying affidavit, sworn by the 1<sup>st</sup> plaintiff. They aver that a search cannot confirm the occupation on the ground and due diligence dictates that a person visits the land they intend to purchase. That it is impossible to conduct a search on unsurveyed land as there is no registry index map delineating the boundaries. Likewise beacon certificates cannot be issued on un-surveyed land. It is also impossible to be issued with an allotment letter in a parcel designated as a no balloting area. The proof of ownership for plots in the area is an allotment letter and not a certificate of lease. Thus the replying affidavit raised no cogent issues and is full of outright lies and half-truths. The applicants reiterate that they will suffer irreparable loss if their application is not allowed as the balance of convenience tilts on their side.

15. The applicants submitted that they have satisfied the conditions upon which a temporary injunction can be granted as they have established a prima facie case with a probability of success and they have a genuine and an arguable case. They have a right which is apparently under threat of being infringed by the respondents. Thus they stand to suffer great prejudice and loss in the event that the application is not granted and that the balance of convenience tilts in their favor. The applicants have relied on the cases of; **Giella Vs Cassman Brown & Co Ltd. [1973] EA 358, Mrao Ltd v First American Bank of Kenya Ltd& 2 others [2003] eKLR, Paul Gitonga Wanjau vs. Gathuthi Tea Factory Company Ltd & 2 Others (2016) eKLR.**

16. The 1<sup>st</sup> respondent submitted that they have put in evidence of their acquisition of the said plot and have a certificate of lease which gives them the legal right to the property. Thus, they should be able to enjoy all rights and privileges as per section 24 of the Land Registration Act. The applicants have also failed to meet the threshold for issuance of the orders sought, hence the application ought to be dismissed with costs as it lacks merit. They relied on the following cases; **Shadrack Kuria Kimani V Stephen Gitau Ngang'a & another [2017]eKLR, Lucy Nchebere V Rose Ndululu Musee [2015]eKLR.**

17. I have considered all the averments advanced by the respective parties. The issue for determination is **whether the order of inhibition should be granted?**

18. **Section 68(1) of the Land Registration Act** provides that:-

***“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, generally until a further order, the registration of any land lease or charge.”***

As it were, an order of inhibition issued under Section 68 of the Land Registration Act bars the registered owner of property under dispute from registering any transaction over the said property until the suit in which the said property is a subject is disposed of.

19. This section is meant to preserve the property from acts that would otherwise render a court order incapable of being executed and or to give an opportunity to hear and decide the matter. The court issuing such an order must be satisfied that the applicant has good grounds to warrant the issuance of such an order because, like an interlocutory injunction, such an order preserves the property in dispute pending trial.

20. From the pleadings of the parties, it is apparent that both sides are claiming ownership of the suit land. I do believe that their averments raise issues which needs to be determined in a full trail. At this interlocutory stage, the court cannot delve into the disputed facts.

21. It is the view of this court that no prejudice will be caused to the defendant/respondent if an order of inhibition is granted. This court is guided by the principle that the court should always take the course that carries the lower risk of injustice as was held in **Dorcas Muthoni & 2 others v Michael Ileri Ngari[206]eKLR** where the court held that;

***“No prejudice will be caused to the defendant/respondent if an order of inhibition is granted as prayed”.***

22. Balancing the two competing interests, the cause of justice will best be served if the order of inhibition is granted. Since each of the parties claim to be in ownership and/or possession of the property subject of this suit, an order of inhibition will not affect those rights but will serve the greater interest by preserving the said land while their proprietary interests are determined.

23. In the final analysis, the application dated 27.7.2020 is hereby allowed. The costs thereof shall abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

Karanja for plaintiff/applicant

M/s. Mukabira for 1<sup>st</sup> defendant

Kung'u for 3<sup>rd</sup> respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**