



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC PETITION NO. E010 OF 2021**

**IN THE MATTER OF ARTICLES 22 (1, 4), 23 AND ARTICLE 40 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED VIOLATION OR INFRINGEMENT OF THE RIGHTS GUARANTEED UNDER ARTICLE 40 OF THE CONSTITUTION**

**FRANCIS MUCHIRI ITIRI ..... PETITIONER**

**VERSUS**

**M'MARANYA M'RIMBERE .....1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**REGISTRAR OF LANDS MERU .....3<sup>RD</sup> RESPONDENT**

**DLASO (DISTRICT LANDS ADJUDICATION OFFICER**

**TIGANIA WEST SUB-COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF SURVEYORS ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The application dated **1.3.2021** seeks interim orders of injunction barring and restraining 1<sup>st</sup> respondent from trespassing into, encroaching, selling, transferring, excavating, building or erecting structures therein pending hearing and determination of the petition.
2. The application is supported by an affidavit sworn on 1<sup>st</sup> March 2021.
3. The grounds are that the late **M'Itiri M'Ekandi** was the registered owner of **Parcel No. L.R Akithi/111/353** which was fraudulently sub-divided and the original map allegedly changed through collusion and fraud. The applicant also claims the 1<sup>st</sup> respondent has trespassed into the subject land hence there is threatened breach of peace.
4. The 1<sup>st</sup> respondent through a replying affidavit sworn on **7<sup>th</sup> April 2021** opposes the application and states he is the registered owner of **Parcel No. Akithi/111/734** adjacent to **Parcel No. Akithi/111/353** belonging to the deceased now sub-divided into **L.R No's 4141, 4136, 4138, 4139 and 353** in favour of the petitioner and his brothers. He claims the petitioners are occupying the aforesaid subdivisions and are the ones intruding into his land **Parcel No. Akithi/111/734**.
5. Further the 1<sup>st</sup> respondent claims that the petitioner is the one who maliciously damaged his fence leading to the criminal case at Tigania Law Courts, which they resolved amicably.
6. He therefore denies any collusion as alleged and maintains his title deed was issued in 2017 hence this petition and application is an afterthought.

7. In the petition dated 1<sup>st</sup> March 2021 the applicant alleges his fundamental rights and freedoms have been violated by the respondents on account of threats, forgery of land documents, collusion to disentitle him of his late father, property and by fraudulent transactions over **L.R No. Akithi/111/353**.

8. The petitioner seeks the aforesaid acts by the respondents be declared illegal, there be cancellation of the altered title deed for **Parcel No. Akithi/111/353**, a permanent injunction restraining the 1<sup>st</sup> respondent from interfering with the aforesaid parcel, certiorari to quash the decision to alter the register, mandamus to cancel the altered map and prohibition against the respondents from interfering with the aforesaid suit land.

9. The respondents are yet to respond to the petition.

10. Be that as it may, for the petitioner to be entitled to temporary injunctive orders, he must establish a prima facie case with a probability of success; he must also show he will suffer irreparable loss and damage which may not be compensated by way of damages and lastly that the balance of convenience tilts in favour of granting the injunction.

11. The applicant has not attached any title deed or search to indicate he owns **Parcel No. Akithi/111/353**, in accordance with **Section 26** of the **Land Registration Act. Article 40 of the Constitution** grants a registered owner legal rights which are protectable by law. He who comes to equity must come with clean hands and make full disclosure. Title deeds were issued in 2017 yet the applicant filed the petition in 2021. The delay in not challenging the process for the last four years has not been explained.

12. Further the 1<sup>st</sup> respondent has produced a copy of a title deed and claims that **Parcel No. Akithi/111/353** has been sub-divided into other parcel numbers in favour of the petitioner/applicant and his brothers. The petitioner has attached a limited grant. His father passed on in 2017, at the same time title deeds were issued.

13. There are internal dispute mechanisms set out under the **Land Adjudication Act**. The applicant has not disclosed if he took advantage of those procedures other than making a complaint with the Office of the Ombudsman. In absence of any document to show he holds legal rights over the suit land no prima facie case has been established with a probability of success.

14. In the circumstances, this application does not meet the threshold for granting temporary injunction. Even if the court was to look at the overriding objective as set out under **Sections 1A, AB and 3 and 3A** of the **Civil Procedure Act**, the same militates against granting interim orders at this stage.

The application is dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2021**

**In presence of:**

Miss Gitonga holding brief for Maranya for 1<sup>st</sup> respondent

Kieti for 2<sup>nd</sup> and 3<sup>rd</sup> respondents

Aketch for petitioner – absent

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**