



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT EMBU**

**E.L.C. PETITION NO. 2 OF 2019**

**IN THE MATTER OF THE BILL OF RIGHTS ENSHRINED IN**

**ARTICLES 10, 20, 22, 23, 27(3), 40(2)(A), 60(1)(F), 165(2)(A),**

**60(1)(F), 165(2)(B) AND 258 OF THE CONSTITUTION**

*AND*

**IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL**

**RIGHTS AND FREEDOMS OF INDIVIDUALS UNDER ARTICLE 22(1)**

**AND ARTICLE 23(1) OF THE CONSTITUTION**

**ESTHER NJOKI NJIRU.....PETITIONER**

**VERSUS**

**BONIFACE NJIRU.....RESPONDENT**

**RULING**

1. By a notice of motion dated 11<sup>th</sup> February, 2019 brought under **Article 40(2)(a) of the Constitution of Kenya, Section 68 (1) of the Land Registration Act, Order 50 rule 10 of the Civil Procedure Rules, Section 1A & 3A of the Civil Procedure Act and all other enabling provisions of the law** the Petitioner sought the following **orders**:

- a. That this matter be certified as extremely urgent and service of this application be dispensed with in the first instance.
- b. That this honourable court be pleased to issue an inhibition order against land parcels No. Ngandori/Ngovio/154, Ngandori/Ngovio/6164, Ngandori/Ngovio/6165, Ngandori/Ngovio/6166, Stall No. 18 Kibugu market and Plot No. 22 Kibugu market pending the hearing and determination of the application herein interpartes.
- c. That this honourable court be pleased to issue an inhibition order against land parcels No. Ngandori/Ngovio/154, Ngandori/Ngovio/6164, Ngandori/Ngovio/6165, Ngandori/Ngovio/6166, Stall No. 18 Kibugu market and Plot No. 22 Kibugu market pending the hearing and determination of the petition herein.
- d. That costs of this application be provided for.

2. The said application was based upon the grounds set out on the face of the motion and the supporting affidavit sworn by the Petitioner on 11<sup>th</sup> February 2019. It was contended that the Respondent, who is the father of the Petitioner, had discriminated against her in the allocation of land to his children in that whereas the male children were given a share of land she was left out on account of her gender. It was the Petitioner's contention that suit properties were given to the Respondent by the clan hence he was to hold the same for his own benefit and the benefit of his children without discrimination.

3. The Respondent filed an undated replying affidavit in opposition to the said application. He stated that the properties intended to be encumbered were not registered solely in his name since they were jointly registered with other persons who were not party to the petition.

4. The Respondent denied that he was holding any of the suit properties on behalf of any of his children and contended that there were no constitutional issues raised in the petition.

5. When the said application was listed for hearing on 11<sup>th</sup> March 2019 the parties were directed to file their respective submissions within specified timelines. The record shows that the Petitioner filed her submissions on 21<sup>st</sup> May 2019 whereas the Respondent filed his on 16<sup>th</sup> April 2019.

6. The court has considered the Petitioner's said application for interim orders, the Respondent's affidavit in opposition thereto as well as the written submissions on record. The main question is whether the Petitioner has made out a case for the grant of the orders of inhibition sought against the various suit properties set out on the face of the notice of motion.

7. This being a constitution petition, the Petitioner only needs to demonstrate that she has an arguable case in order to be entitled to some form of conservatory order to preserve the suit properties until the hearing and determination of the petition. The applicable test was summarized in the case of **Ezra Chiloba V Wafula Chebukati & 7 Others [2018] eKLR** as follows:

**“44. In summary, a party seeking conservatory orders should demonstrate, a prima facie case with a likelihood of success; prejudice likely to be suffered if the orders are not granted; grant of the orders would enhance constitutional values and objects; that a Petition would be rendered nugatory if the orders are declined and that public interest favours grant of the orders (see *Lipisha Consortium Ltd & Ar. v Safaricom Ltd (2015) eKLR.*”**

8. The court has perused the copies of the land register for *Title No. Ngandori/Ngovio/154*. The register shows that it is registered jointly in the name of the Respondent and Loise Wambugi Njiru who is said to be the Petitioner's mother. The said Loise Njiru was not joined in the petition.

9. The court has also perused the copies of the land register for *Title Nos. Ngandori/Ngovio/6164, and 6165, 6166* and noted that they are all jointly registered in the name of the Respondent and one Rhoda Wanda Njiru. The said Rhoda Wanda Njiru is not party to this petition.

10. It is also evident from the material on record that no evidence was furnished to demonstrate the ownership of the plots which were described as *stall No. 18 Kibugu Market* and *Plot No. 22 Kibugu Market*. The court is therefore unable to establish the nature and extent of the Respondent's interest, if any, in the said properties

11. It is interesting to note that a man who is accused of discriminating against women has several of his properties registered jointly with women as co-proprietors! However, the issue of the alleged discrimination shall be a question to be tried and determined conclusively by the trial judge. The court shall not make any definitive conclusion thereon at this stage which may prejudice the fair trial of the petition.

12. The court is of the opinion that on the basis of the material on record the Petitioner has not demonstrated any serious or arguable case which would warrant the granting of interim orders pending the hearing and determination of the petition. There are at least two co-proprietors of the various suit properties who were not joined in the petition. It would be unjust and a violation of the rules of natural justice if the court were to make any orders adversely affecting their property rights without according them a hearing. The Petitioner has also failed to demonstrate the Respondent's interest in the unregistered plots which were cited in the notice of motion.

13. The upshot of the foregoing is that the court finds no merit in the Petitioner's notice of motion dated 11<sup>th</sup> February 2019 and the same is consequently dismissed. Costs of the application shall be in the cause.

14. It is so ordered.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **11<sup>TH</sup> DAY** of **JULY, 2019**.

In the presence of Ms. Muriuki holding brief for Mr. Andande for the Petitioner and Mr. Karuti holding brief for Mr. Momanyi for the Respondent.

Court Assistant Mr. Muinde

**Y.M. ANGIMA**

**JUDGE**

**11.07.19**