



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO. 186 OF 2014

KINYUA KAREKO.....PLAINTIFF

VERSUS

KITHAKA KAREKO.....DEFENDANT

RULING

1. By a ruling dated 11th May 2017, the court granted an order of inhibition prohibiting any dealings with *Title Nos. Kagaari/Kigaa/786* (hereinafter parcel No. 786) and *Title No. Kigaa/Gikuuri/T.63* (hereinafter parcel No. T.63) until the disposal of this suit. Prior to delivery of the said ruling, there were earlier interim orders issued on 4th April 2017 prohibiting any dealings with parcel No. 786 pending delivery of the ruling.
2. It would appear, however, that there were some dealings with the suit properties both before and after issuance of the aforesaid orders. The record shows that parcel No. T.63 was transferred to Charles Mugambi Ireri on 9th December 2013, that is, about 3 months after the filing of the suit.
3. The record further shows that parcel No. 786 was subdivided into parcel Nos. Kagaari/Kigaa/9498 – 9504 on or about 3rd February 2016 and some resultant parcels transferred to third parties who were not joined in the proceedings.
4. Consequently, by a notice of motion dated 8th November 2017 the Plaintiff moved the court for an order of injunction to restrain the Defendant from alienating or disposing of the resultant subdivisions of parcel No. 786 as well as parcel No. T.63.
5. The said application was based upon discovery of the subdivision and transfer by the Defendant of the said parcels of land which were in dispute. It was contended by the Plaintiff that the Defendant's said actions were intended to defeat the course of justice and to render the suit nugatory.
6. The said application was supported by the Plaintiff's own affidavit sworn on 3rd November 2017. It was stated that the Defendant had sub-divided and alienated some of the suit properties to third parties and that he intended to dispose of the remaining parcels. The Plaintiff, therefore, sought to have the Defendant restrained from disposing of the suit properties including the subdivisions thereof.
7. The court has considered the Plaintiff's said application for an interlocutory injunction under **Order 40 of the Civil Procedure Rules** and the court's inherent jurisdiction. The court has noted from the copies of the green cards that parcel No. T.63 was transferred to a person who is not party to the proceedings. Similarly, the owners of parcel Nos. 9498, 9500 and 9502 were not joined in the proceedings as parties. The current registered owners of parcel Nos. 9501 and 9504 were not disclosed and copies of the relevant green cards were not exhibited by the Plaintiff. In those circumstances, an order of injunction cannot issue with respect to persons who were not joined as parties.
8. In view of the peculiar circumstances of this case, the court hereby grants leave to the Plaintiff to join the current owners of parcel Nos. T.63, 9498, 9500, 9501, 9502 and 9504 as Defendants in this suit. The Plaintiff shall file the amended plaint within 21 days from the date of delivery of this ruling.
9. The court is further of the view that the suit properties including the subdivisions thereof should be preserved pending resolution of the dispute. The court shall therefore grant an order of inhibition against all the parcels the subject of this suit i.e. parcel Nos T.63 and 9498 – 9504 to prohibit any further deals until this suit is concluded under the inherent power of the court.
10. The upshot of the foregoing is that the Plaintiff's application for an injunction is hereby declined. The court, instead, makes the following orders;
 - a. The Plaintiff shall amend the plaint and join the current registered owners of the suit properties as Defendants in the suit within 21 days from the date hereof.

b. An order of inhibition is hereby issued to prevent any further dealings with the suit properties pending the hearing and determination of the suit or until further orders.

c. There shall be liberty to apply.

d. The order of inhibition shall be registered against *Title Nos. Kagaari/Kigaa/9499, 9500, 9501, 9502, 9503, 9504 and Kigaa/Gakuuri/T.63.*

e. Costs of the application shall be in the cause.

11. It is so decided.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 5TH day of JULY, 2018.

In the presence of the Plaintiff and the Defendant both in person.

Court clerk Mr Muinde.

Y.M. ANGIMA

JUDGE

05.07.18