



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC PETITION NO. 15 OF 2019**

**IN THE MATTER OF ALLEGED CONTRAVENTION**

**OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER**

**ARTICLE 40 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**SOLOMON KIJEA MWONGO**

**(Legal representative of DAVID**

**MUNGIRIA MWONGO- Deceased).....PETITIONER**

**VERSUS**

**DISTRICT LAND ADJUDICATION OFFICER**

**TIGANIA WEST.....1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR TIGANIA/IGEMBE.....2<sup>ND</sup> RESPONDENT**

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

**ROSE MWENDWA MUGAMBI.....4<sup>TH</sup> RESPONDENT**

**ISAIAH IGWATHU.....5<sup>TH</sup> RESPONDENT**

**ELIAS MWENDA M'MINYORI.....6<sup>TH</sup> RESPONDENT**

**STANLEY KAIBUNGA.....7<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant filed the notice of motion dated 11/06/2019, seeking an order of inhibition in respect of parcel Nos. NYAMBENE/URINGU 1/2312, 1/2111, 2176, and 2322 pending the hearing of the suit. In the alternative, the applicant prays for an order of maintenance of status quo (*No developments, evictions, constructions*) and or preservatory orders till this matter is heard and determined.

2. The application is based on the grounds on the face of it and on the supporting affidavit of David Mungiri Mwongo, the petitioner who avers that one M'Anampiu M'Eringo (now deceased) was the original owner L.R NO. URINGU1/ADJ-SECTION NO. 56 and out of that parcel he was given land parcel No. 2155 measuring approximately 1.28 acres. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have conspired and colluded with the 4<sup>th</sup> and 5<sup>th</sup> respondents to illegally hive off a portion 0.78 acres of his parcel. That the illegally hived off portion is currently what constitutes Land parcels Nos. NYAMBENE/URINGU 1/2312, 1/2111, 2176, 2322, the suit parcels respectively.

3. The application is opposed by the 4<sup>th</sup> to 7<sup>th</sup> respondents vide replying affidavits dated 26/08/2019, 13/08/2019 and 20/08/2019. The contents of the said affidavits are more or less the same. The respondents contend that they are not aware of parcel L.R NO. URINGU1/ADJ-SECTION NO. 56 or that their own individual parcels were excised from the alleged parcel. They further state that petitioner did file

objections against the registration of their parcels and his objections were dismissed and he has never appealed.

4. I have considered the application, the replying affidavits and the submissions of the parties. The issue for determination is **whether the prayer for inhibition or the alternative prayer of maintenance of status quo are merited?**

5. 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.”***

6. In the case of **Japhet Kaimenyi M’Ndatho v M’Ndatho M’Mbwiria [2012] eKLR**, the court dealt with the threshold for granting orders of inhibition in a pointed manner as follows;

***“In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-***

***a. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.***

***b. That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.***

***c. That the applicant has arguable case.”***

7. 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. These provisions give court’s discretion to issue orders which are in the nature of an injunction restraining dealings on land pending further orders by the court. The 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.

8. At this interlocutory stage, the court is not dealing with the conflicted facts regarding the disputed parcels of land. It is therefore necessary to preserve the status quo pending the hearing and determination of these disputed matters.

9. I find that the application has merits. I allow the application in the following terms:-

a) There be an order of inhibition to be registered against parcels LR. Nos. NYAMBENE/URINGU 1/2312 and NYAMBENE/URINGU 1/2111, 2176, 2322 pending the hearing and determination of this suit.

b) Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 5<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

Miss Mbogo for 4<sup>th</sup> – 7<sup>th</sup> respondents

Ondari for petitioners

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**