



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ORIGINATING SUMMONS NO. 17 OF 2020 (OS)

CHRISTIAN COMMUNITY LIFE CHURCH.....PLAINTIFF

(Suing through its officials)

PAUL MWANGI (RESIDENT PASTOR)

GILBERT KIREMA (DEPUTY BISHOP)

SAMUEL KIANIA (GENERAL SECRETARY)

THOMAS MWANGANGI (NATIONAL TREASURER)

VERSUS

EUNICE KINANU MBAE.....1ST DEFENDANT

JAMES MWENDA KINYUA2ND DEFENDANT

(Sued as legal representative of the estate of

EPHRAIM MBAE THURANIRA (deceased)

RULING

1. Before this court is an application dated 18th June 2020 seeking for the following orders:

(i) That the honourable court be pleased to certify this application of utmost urgency and to hear it ex parte and on a priority basis in the 1st instance.

(ii) That the honourable court be pleased to issue an order of inhibition inhibiting any dealings with land parcel No. Ntima/Igoki/5260 either by way of transfer, sale, lease, charge or otherwise pending the interpartes hearing and determination of this application.

(iii) That the honourable court be pleased to issue an order of injunction restraining the defendants whether by themselves, their agents/employees/servants/children/ siblings/beneficiaries or anyone claiming through them from entering, trespassing, occupying, taking possession or in any other way interfering with the plaintiff's quiet possession, occupation and use of land parcel number Ntima/Igoki/5260 pending the interpartes hearing and determination of this application.

(iv) That the honourable court be pleased to issue an order of inhibition inhibiting any dealings with land parcel no. Ntima/Igoki/5260 either by way of transfer, sale, lease, charge or otherwise pending the hearing and determination of this suit.

(v) That the honourable court be pleased to issue an order of injunction restraining the defendants whether by herself, her agents/employees/servants/children/siblings/ beneficiaries or anyone claiming through her from entering, trespassing, occupying and use of land parcel number Ntima/Igoki/5260 pending the hearing and determination of this suit.

(vi) Costs of the application be provided for.

Background

2. The applicant through an originating summons taken out on 18th June 2020 seeks the following questions and orders for determination:

(a) That the honourable court be pleased to certify this application of utmost urgency and to hear it ex parte and on a priority basis in the 1st instance.

(b) That the honourable court be pleased to issue an order of inhibition inhibiting any dealings with land parcel Ntima/Igoki/5260 either by way of transfer, sale, lease, charge or otherwise pending the inter partes hearing and determination of this application.

(c) That the honourable court be pleased to issue an order of injunction restraining the defendants whether by themselves, their agents/employees/servants/children/ siblings/beneficiaries or anyone claiming through them from entering, trespassing, occupying, taking possession or in any other way interfering with the plaintiff's quiet possession, occupation and use of land parcel number Ntima/Igoki/5260 pending the interparties hearing and determination of this application.

(d) That the honourable court be pleased to issue an order of inhibition inhibiting any dealings with land parcel no. Ntima/Igoki/5260 either by way of transfer, sale, lease, charge or otherwise pending the hearing and determination of this suit.

(e) That the honourable court be pleased to issue an order of injunction restraining the defendants whether by herself, her agents/employees/servants/children/siblings/ beneficiaries or anyone claiming through her from entering, trespassing occupying, taking possession or in any other way interfering with the plaintiff's quiet possession, occupation and use of land parcel No. Ntima/Igoki/5260 pending the hearing and determination of this suit.

(f) That costs of the application be provided for.

3. The same is supported by an affidavit sworn by Paul Mwangi with annexures marked PM 1- 6.

4. The respondents have opposed the originating summons by an affidavit sworn on 16th October 2020 with attached annexures marked EK 1 – 3.

5. Similarly the respondents are opposed to the application for inhibition as well as injunction on grounds that the alleged time for adverse possession has not materialized, the property is charged with a bank, that the capacity of the applicants changed and that the property has been transmitted by a succession court to the respondents.

6. This court is yet to give directions on the mode of disposal of the originating summons. That notwithstanding the court is asked to issue temporary orders pending hearing and determination of this suit.

7. For the applicant to succeed, they have to; establish a prima facie case with a probability of success, demonstrate they will suffer irreparable damage which may not be compensated by way of damages and lastly the balance of convenience tilts in favour of granting them injunctive orders as held in *Giella Vs Cassman Brown*.

8. Concerning the issue of inhibition by dint of section 68 (1) of the Land Registration Act the court has powers to make such order to inhibit for a particular time, or until the occurrence of a particular event generally or until a further order, the registration of any land, lease or charge.

9. So the inhibition orders bar a registered owner of the property under dispute from registering any transaction over such property until a suit such as this one, is disposed of one way or the other.

10. In essence the purpose of this section is to enable preservation of the property pending determination of any rival claims.

11. Has the applicant made a prima facie case with a probability of success?

12. Now briefly the undisputable facts of this matter are that:

(a) The subject property belonged to the late Ephraim Mbae Thurania.

(b) The deceased took up a loan with the National Bank of Kenya as it then was now NCBA but was unable to service the loan leading to the bank exercising a statutory power of sale on 11.2.2000 in favour of the applicant herein.

(c) As at the time of his demise there was no discharge of charge hence the property to date is still encumbered.

(d) The applicants have been in physical possession and occupation for some time with full knowledge of the respondent.

(e) No objection was raised by the applicants during the succession cause over their rights as well as the bank.

13. As stated above, the court is yet to give directions on the manner of disposal of the entire case. Parties are yet to exchange documents if any. That notwithstanding the respondents do not dispute the applicants have been in occupation of the land for at least ten years with full knowledge of the deceased and by extension themselves. Though it is alleged notices to vacate were given none have been demonstrated before this court.

14. Similarly the applicants allege they have made immense developments on the suit land although no such occurrence by way of approved development plans have been exhibited. Nevertheless the respondents have also not disputed those facts other than to say there has been change of management of the church and that the terms of occupation were temporary.

15. The court notes these are issues which parties shall ventilate during the main hearing.

16. At this juncture what appears to be clear in the mind of the court as per the pleadings is that the applicant has a prima facie case, has demonstrated the circumstances under which they got into the subject land and as a result acquired equitable possessory rights worthy protecting before the matter is heard and determined.

17. Secondly the court is alive to the fact that the applicants started asserting their equitable rights both in the Chief Magistrate's Civil Case no. 17 of 2019 and later in High court CC appeal no. 91 of 2019 National Bank of Kenya vs Christian Community Life Church.

18. Further it is evident that while the respondents have been aware of the charge by the bank, no effort has been made to have it discharged one way or the other. The inference is that the respondents are aware of the circumstances under which the applicants came into possession. Incidentally, the respondent's affidavit in reply does not contest the facts of the purchase of the subject property out of statutory power of sale hence the balance of convenience tilts in favor of granting the injunction.

19. Concerning the other limb of irreparable damage it is this court's finding that given the alleged developments over the subject land, it is only fair to preserve the subject property by maintaining its current status pending the hearing and determination of the matter.

20. The upshot is that the application dated 18th June 2020 is allowed in terms of prayers 4 & 5 on the following conditions:

(1) The applicants to execute and file before this court within 7 days an undertaking as to damages and costs for Kshs.4 million.

(2) Parties to exchange responses and documents within 30 days thereafter appear for pre-trial conference within 45 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 29TH DAY OF SEPTEMBER, 2021 IN PRESENCE OF:

C/A: Kananu

Mutuma for plaintiff

HON. C.K. NZILI

ELC JUDGE