



Rithara v Mwamba & 2 others (Sued as the administrations of the Estate of M'Mwamba M'Munyua - Deceased) (Environment & Land Case E013 of 2021) [2021] KEELC 1990 (KLR) (22 September 2021) (Ruling)

Stanely Gatobu Rithara v Catherine Kathure Mwamba & 2 others [2021] eKLR

Neutral citation: [2021] KEELC 1990 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT & LAND CASE E013 OF 2021

LN MBUGUA, J

SEPTEMBER 22, 2021

IN THE MATTER OF ADVERSE POSSESSION OVER L.R NO. ABOOTHUGUCHI/GITIE/183

AND

IN THE MATTER OF LIMITATION F ACTIONS ACT (CAP 22)

AND

**IN THE MATTER OF THE LAND ACT NO. 6 OF 2013
AND IN THE LAND REGISTRATION ACT NO. 3 OF 2012**

BETWEEN

STANELY GATOBU RITHARA PLAINTIFF

AND

CHARITY NGUGI MWAMBA 1ST DEFENDANT

CATHERINE KATHURE MWAMBA 2ND DEFENDANT

GRACE KIENDE MWAMBA 3RD DEFENDANT

**SUED AS THE ADMINISTRATIONS OF THE ESTATE OF M'MWAMBA
M'MUNYUA - DECEASED**

RULING

1. Before me is a notice of motion dated 11th March 2021, where the applicant/plaintiff is seeking a temporary order of Injunction restraining the defendants whether by themselves, agents, servants, purchasers or any person whomsoever from evicting, selling, leasing, charging or otherwise howsoever interfering with the plaintiff's/applicant's quiet, peaceful, actual and exclusive possession, cultivation,



use, development and enjoyment of 1 acre on parcel of land number ABOTHUGUCHI/GITIE/183 pending the hearing and the determination of the suit. The applicant in this Application is also seeking an order of inhibition in respect of the aforementioned land plus costs of the application.

2. The application is based on the grounds or the face of it and on the supporting affidavit of the plaintiff/applicant, who avers that on 26/01/2006, him and the defendant's late brother Mark Marocho Mwamba (deceased) entered into an agreement for sale of land where he agreed to sell 1 acre to be excised from the suit land to enable them file a succession cause being Meru HC Succession Cause No. 29 of 2006. That he paid the full consideration price of Kshs. 120,000 and the 2nd administrator Charity Ngugi Mwamba was present and she even signed as witness. The applicant then took possession of the 1 acre and commenced developments, planting seasonal crops, trees, and installed piped water for irrigation.
3. However, after the death of Mark Marocho Mwamba (deceased), the administrators changed their minds and now want to dispossess him of the land which he has occupied for the last 15 years and he has now reliably learnt that the administrators have sold the same to a 3rd party. He faces imminent danger of being evicted, thus he will suffer great prejudice, irreparable loss and damage. It is only fair and just that the application be allowed.
4. The advocate for the plaintiff had alluded to the fact that the defendants had filed their grounds of opposition, though none can be found in the court file, as such I do consider the application to be unopposed.
5. The plaintiff filed an application seeking that prayer 2 of the main application be allowed as the defendants had forcibly entered into the suit land with a surveyor and other strangers sub dividing the suit land. The court granted an order of temporary injunction on a temporary basis pending the delivery of this ruling.
6. I have carefully perused the application and the affidavit in support. To grant or not to grant the order of injunction and inhibition is the issue for determination.
7. In the Court of Appeal case of National Bank of Kenya Limited v Juja Coffee Exporters Limited [2021] eKLR, the court had this to say on applications for injunctions;

“In keeping with the long-standing principles in *Giella vs. Cassman Brown Co Ltd* [1973] E.A. 358, the grant or refusal of an interlocutory injunction is a matter of exercise of judicial discretion and an applicant is required to show a prima facie case with a probability of success; secondly, that it would suffer irreparable harm which would not be adequately compensated by an award of damage; and lastly if the court was in doubt, to determine the application on a balance of convenience”.
8. In *Mrao vs First American Bank of Kenya Ltd & 2 others* (2003) KLR 125, the court defined a prima facie case as follows:

“In civil case, it is a case in which on the material presented to the court, a tribunal property directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
9. The plaintiff avers that he has been in occupation of the 1 acre of the suit land since the year 2006 and has made several developments on the land. He has also annexed photographs indicating that he farms on the land. He has also availed a sale agreement in respect of the 1 acre portion of the suit land. These averments have not been rebutted by the defendants and I am therefore inclined to find that the



plaintiff has established a prima facie case and that he stands to suffer irreparable damage which cannot be adequately compensated by an award of damages. Thus the prayer for injunction is merited.

10. On inhibition, I make reference to the provisions of Section 68(1) of the [Land Registration Act](#) which 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.”

11. Ordinarily, orders of inhibition are issued when the court is satisfied that there is a real danger of the subject matter being disposed off before the determination of the suit and if preservatory orders are not granted, the property would be alienated or disposed of. From the averments put forth by the plaintiff, there has been a succession cause which determined the sub division of the suit property. The applicant added that surveyors visited the suit land for purposes of sub-dividing the same. I do opine that the plaintiff's fears are not far-fetched as the alienation of the suit land is a real possibility. To this end, I find that the orders of inhibition are also merited. In the final analysis, the court allows the application dated 11th March 2021. However, both orders of injunction and inhibition shall be in force for a period of one year only. The costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIA EMAIL AT MERU THIS 22ND DAY OF SEPTEMBER, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a notice issued on 3.9.2021. In light of the declaration of measures restricting court operations due to the COVID-19 pandemic and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the Civil Procedure Rules which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE

