



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. E020 OF 2021

FAITH KARAMBU.....1ST PLAINTIFF

JAMES MURIAN M'IMUKUU2ND PLAINTIFF

NANCY IKOLOMANI MITHIKA.....3RD PLAINTIFF

GEORGE MWINGIRWA M'IMUKUU.....4TH PLAINTIFF

EDWARD GIKUNDI M'IMUKUU.....5TH PLAINTIFF

JANE KANANU M'IMUKUU..... 6TH PLAINTIFF

JOTHAM MWENDA M'IMUKUO.....7TH PLAINTIFF

VERSUS

EUNICE WAMBUI MUKIRI.....1ST DEFENDANT

JAMES MWENDA.....2ND DEFENDANT

MARTHA MUKORURU MUKARIA.....3RD DEFENDANT

MURIUNGI ANJELO.....4TH DEFENDANT

MUTIRITHIA KIRAITHE.....5TH DEFENDANT

MOSES KITHINJI LITHARA.....6TH DEFENDANT

FLORENCE MUTHONI KITHINJI.....7TH DEFENDANT

EDWARD NDEKE KIRIUNGI.....8TH DEFENDANT

CHRISTINE KARWITHA MBAABU.....9TH DEFENDANT

STANLEY MWENDA JOSHUA.....10TH DEFENDANT

MARITHA INKO M'AMBU TU.....11TH DEFENDANT

GEOFFREY KITHINJI M'TWARUCHIU.....12TH DEFENDANT

KENNETH MUNENE.....13TH DEFENDANT

NAMAN MUTUMA MUGAA.....14TH DEFENDANT
NICHOLAS MUTETHIA.....15TH DEFENDANT
GEDION KAINDIO MAINGI.....16TH DEFENDANT
MERU COUNTY GOVERNMENT.....17TH DEFENDANT
THE LAND REGISTRAR, MERU NORTH.....18TH DEFENDANT
THE HON. ATTORNEY GENERAL.....19TH DEFENDANT

RULING

1. Through a notice of motion dated 14th June, 2021, the application seeks conservatory orders in the nature of an inhibition against the respondents restraining them from any dealings with the register for the titles for **Land Parcels No's:**

THAU/MUMUI/230, THAU MUMUI/321, THAU/MUMUI/398, THAU/MUMUI/409, THAU/MUMUI/THAU/MUMUI/411, THAU/MUMUI/412, THAU/MUMUI/475, THAU MUMUI/476, THAU MUMUI/478, THAU/MUMUI/479, THAU/MUMUI/480, THAU/MUMUI/504, THAU/MUMUI/694, THAU/MUMUI/695, THAU/MUMUI/696, THAU/MUMUI/697 and THAU/MUMUI/698 hereinafter the suit by entering, trespassing, cultivating, alienating, constructing, selling and/or interfering with the quiet use and occupation by the applicants or otherwise dealing with the aforesaid parcels of land pending the main suit herein.

2. The application is supported by two affidavits sworn on 14th June 2020 and 21/9/2021 respectively and annexures thereto.

3. The application is premised on the grounds that suit premises though belonging to the 1st applicant and have been illegally and or unprocedurally registered in the names of the respondents respectively, and without the applicants consent or approval.

4. It is averred the suit premises initially belonged to the deceased, whose successors in title are the applicants who discovered illegal subdivisions in **March 2016** during the adjudication process. Copies of searches attached however confirm the respondents possess title deeds and allegedly threatening to start construction. The applicants aver they have been in occupation of the suit premises and hence stand to suffer grave loss and damage unless orders sought are granted.

5. For a party to be entitled to injunctive as well as inhibition orders, there must be a prima facie case, demonstration of irreparable loss and lastly the balance of convenience must tilt in his favour as herein. *Mrao Ltd. –vs- First American Bank of Kenya ltd. (2003) eKLR.*

6. In the instance case **annexure marked FK2** indicate the registration was done in **2004, 2005, 2006** respectively and title deeds between **2006 – 2013** or thereabout.

7. The applicants have stated their late father passed on in **1990**, and eventually discovered the subdivisions in March 2016. It is not clear what action they ever took to assert their rights between 2016 and the filing of this suit.

8. Though letters of administration ad litem were granted in to **Bernard Kirimi Imukuu on 18th May, 2016**, it is not clear why the said legal representative did not move to court the soonest possible for reprieve.

9. Further it is also not clear whether the deceased had lodged any claim over the suit parcels with the relevant offices during the adjudication process prior to his demise and in which case, the applicants would be making a follow-up.

10. The applicants have to demonstrate a legal right to the suit premises worthy protectable under **Article 40 of the Constitution**, and **Land Registration Laws**, and by extension **Order 40** of the **Civil Procedure Rules**.

11. In the instant case the defendants have title deeds which under **Section 26 of the Land Registration Act** are to be taken as valid unless on account of fraud, illegality and invalidity. The applicants claim is yet to be proved through evidence on whether those title deeds are impeachable in law or not. In my view the applicants have not established a prima facie case with a probability of success.

12. Regarding irreparable loss in *Kipchichir Kogo –vs- Frank Kimeli Tenai (2018) eKLR*, the court said is injury which cannot be adequately compensated by way of damages. An applicant must therefore demonstrate irreparable damage will occur if the injunction is not granted. Other than the photographs, the applicants have not explained the nature of their occupation over the suit land. There are no buildings in the photographs to show the applicants reside on the suit premises, hence the alleged injury or consequences thereof have not been demonstrated.

13. As regards the balance of convenience, the applicants have admitted knowledge of the subdivisions in March 2016. Subsequently the parcels were registered and title deeds issued to the respondents. There was obviously inaction on the part of the applicants in moving to court. He who comes to equity must move with speed. He or she must also not sleep on his or her rights. The applicants have waited far too long before asserting their rights.

14. In Centre for Rights Education and Awareness (CREAW) & Another –vs- Speaker of National Assembly & 2 Others (2017) eKLR the court emphasized that a party seeking conservatory orders must show that their rights are under threat of violation, are being violated and that such violation is likely to continue unless an order is issued. Such orders prevent violation of rights and freedoms and preserve the subject matter pending hearing of a petition.

15. The suit herein is brought by way of a plaint. The application does not invoke **Article 23 (3) of the Constitution**. Title

deeds have already been issued. There is therefore nothing to stop, with regard to dealings between the 1 – 16 respondents and the 18th - 19th respondents. The prayer is rejected.

16. As regards a prayer for inhibition, **Section 68 (11) of the Land Registration Act** grants a court powers to issue such orders for a particular time or until the occurrence of a particular event or until a further order, the registration of any land lease or charge. The applicants are not alleging the suit premises are held in trust for them but plead they were illegally, fraudulently and or unprocedurally registered hence demand for cancellation.

17. An order for inhibition is similar to an order for prohibitory injunction which bars the registered owner of property under dispute from registering any transaction over the said property until further orders or until the suit is determined. The court must be satisfied the applicant has good grounds to warrant issuance of such orders.

18. Having looked at the circumstances of this case and the law and bearing in mind the court should always take the course which carries the lower risk of injustice, I decline to grant the orders sought at an interlocutory stage.

19. However in the interest of greater justice, status quo subsisting at the time of filing this suit shall be maintained for six months only.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 27TH DAY OF OCTOBER, 2021

In presence of:

Miss Mwititi for applicant

Miss Materi for 17th defendant - absent

Mr. Kiety for 18th and 19th defendants

Court Clerk: Kananu

HON. C.K. NZILI

ELC JUDGE