



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 131 OF 2014

BERTHA MWARI KIMATHI & 7 OTHERS.....PLAINTIFFS

VERSUS

SILAS MAINGI M'MUTHAURA.....DEFENDANT/RESPONDENT

RULING

1. By a motion dated 29th January 2021 1st applicant seeks the following orders:

(i) That this honourable court be pleased to certify this matter as urgent and be heard exparte at the first instance.

(ii) That this honourable court be pleased to grant leave to the firm of Kaimba Peter & Co. advocates to come on record for the plaintiffs.

(iii) That this honourable court be pleased to make an order of inhibition inhibiting all dealings in respect to land parcel No. Kiriua/Nkando/537.

(iv) That this honourable court be pleased to grant leave to the plaintiff's/applicants to cite the defendant/respondent herein for contempt of court.

(v) That this honourable court be pleased to make an order for committal against the defendant/respondent herein for disobeying court orders made on 30.9.2014 for such a period as this hon. Court may deem fit and just.

(vi) That this honourable court be pleased to make an order of review the court's judgment delivered on 30.9.2014.

(vii) That his honourable court be pleased to make any further orders as it deems fit and just.

(viii) That the cost of this application be provided for.

2. The application is supported by an affidavit by **Bertha Mwari Kimathi** sworn on 29th January 2021. She depones that she is unable to execute the decree of this court through the registration of mutation from by the land surveyor upon subdivisions on account of non-cooperation by the respondents. She alleges there are new numbers on the registry map over the property making it difficult to proceed with registration.

3. Though this court on **21st December 2016** granted orders for the executive officer to execute necessary documents on behalf of the respondent she has now come to this court for further orders including an inhibition, citing of the defendants for contempt of court and if found guilty to be committed to civil jail for disobeying a court order and lastly seeks for review of the court's judgment delivered on **30th September 2014**.

4. Despite service of the application upon the respondent, no response has been made. The court has gone through the application, the supporting affidavit and the annexures attached.

5. There is no search from the Land Registrar and or a Land Surveyor to indicate the alleged new numbers or beneficiaries who have been sold and or transferred the new parcels of land.

6. There is also no disposition from the land surveyor on the exact difficulties he is facing in implementing the court's decree.

7. There is no averment as to when, where and how the respondent was summoned, requested and or ordered to attend any meetings for

purposes of undertaking any process regarding compliance with the court orders. Ever since the mutation form was signed by the executive officer Meru Law Courts, no reports have been furnished by the applicant on the progress so far.

8. While this court has power under **Section 68(1)** of the **Land Registration Act** to issue inhibition orders, a party seeking such orders must be specific and clear as to which parcels of land orders are to be issued against.

9. The applicant states there are new numbers over the subject land meaning **Parcel No. Kiirua/Nkando/531** no longer exists or if it exists, it has been subdivided into other numbers. There must be some official reports to that effect.

10. It has been alleged the respondent has colluded with some land officers to subdivide and register mutations without changing the acreage of the property on the green card. This is a very serious allegation and if true, it may result to grave consequences on the perpetrators.

11. The court needed to be supplied with concrete evidence that this is the state of affairs regarding the suit land. Perhaps a letter of complaint by the applicants to the relevant authorities would have sufficed. In absence of such material it becomes very difficult for this court to grant orders in vain.

12. The particular officers should have been notified and or indicated in the application.

13. Similarly the court has been asked to review its judgment of 30th September 2014. The basis for that is not clear. The terms in which the review is requested are not clear and it would be premature for this court to do so in absence of any material before it.

14. I notice that no decree has been extracted and served upon the relevant agencies for execution so that there can be a structured way of effecting the decree failure of which the natural consequences of non-compliance with court processes can be invoked.

15. In the premises and for lack of any iota of evidence of the alleged contempt, or refusal to sign the alleged forms, the court declines to allow **prayers 3, 4, 5 & 6** of the application. Leave is hereby granted for the firm of Kaimba Peter and co. advocates to come on record for the applicants.

16. Meantime the applicants shall extract and serve upon the land registrar the decree of this court for its implementation.

17. In the event of any need for signatures by either defendant there are already subsisting orders by the court to that effect.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 6TH DAY OF OCTOBER, 2021 IN PRESENCE OF:

Kaimba for plaintiff/applicant

Defendant in person

Court Clerk: Kananu

HON. C.K. NZILI

ELC JUDGE