



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 67 OF 2019

JACOB KIRIINYA..... PLAINTIFF

VERSUS

WILLIAM MUTUMA KIMATHI.....1ST DEFENDANT

JENIFFER KARAMBU..... 2ND DEFENDANT

SALOME KANINI..... 3RD DEFENDANT

NAOMI KANYUA..... 4TH DEFENDANT

ESTATE OF MARY KARIMI..... 5TH DEFENDANT

ESTATE OF RACHEL KINYUA..... 6TH DEFENDANT

ESTATE OF LUCY KAGWIRIA.....7TH DEFENDANT

JULIUS MBAYA..... 8TH DEFENDANT

TABITHA KAROKI MARETE..... 9TH DEFENDANT

GLADYS MWARI.....10TH DEFENDANT

RULING

1. This ruling is regarding three applications dated **26.11.2019** seeking for conservatory orders, restraining the defendants from interfering with **Parcel No. Kibirichia/Kibirichia/2445**; two applications dated **26.10.2021** seeking for judgment on admission against **1st, 8th and 9th** defendants as prayed in the plaint and a request for judgment in default against **2nd, 3rd, 4th, 5th and 7th** defendants, who despite service have failed to enter appearance.
2. The applications are supported by affidavits sworn by the plaintiff on 26.11.2010 and 26.10.2021 respectively. Through a plaint dated 26.11.2019 the plaintiff avers by an agreement dated 8.3.2019 the **1st** defendant on behalf of the estate of the late **M'Marete M'Rimberia** who is the father to the other defendants was sold some land which has not been transferred to him.
3. The plaintiff avers it is only the **10th** defendant who is opposed to his claim of 2 acres and therefore seeks for a declaration that he is entitled to the 2 acres and for permanent injunction restraining the defendants from selling or interfering with his quiet possession of the purchased portion.
4. In support of the application the plaintiff has attached the sale agreement dated 3.5.2015, confirmation of grant issued on 3.6.2015 for the estate of the deceased, ruling in succession cause No. 137 of 2009 dated 23.1.2019. The defendants were duly served with the summons and an affidavit of service filed on 6.2.2020, after which the **1st, 8th and 9th** defendants filed statements of admission of the claim.
5. Similarly the defendants were served with the two applications and an affidavit of service filed on 28.10.2021.
6. As regards the request for conservatory orders, the applicant claims he purchased for value the suit land and has made developments by putting up a hotel. The **1st, 8th and 9th** defendants have admitted those facts. The applicants claims is also clearly indicated in the succession

cause proceedings.

7. In *Centre Rights Education and Awareness (Crew) & Another –vs- Speaker of the National Assembly and 2 Others [2017] eKLR* the court held a party seeking conservatory orders must demonstrate his rights are under threat of violation which is likely to continue unless the orders are issued whose purpose is to preserve the subject matter as well as prevent the threat of violation pending hearing and determination of the matter.

8. In *Gatirau Peter Munya –vs- Dickson Mwenda Kithinji & 2 Others [2014] eKLR*, the Supreme Court held conservatory orders bear a public law connotation, must be granted in the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes and priority levels attributable to the relevant causes.

9. Regarding the principles to be demonstrated by an applicant, in *Board of Management of Uhuru Secondary School –vs- City County Director of Education and 2 others [2015] eKLR* the court held an applicant must demonstrate a prima facie case with a likelihood of success and that in the absence of such orders he will be prejudiced.

10. Applying the above principles and considering the facts of this case, I find the applicant has established a prima facie case with a likelihood of success. The applicant is likely to suffer irreparable damage not compensable by way of damages. The balance of convenience also tilts in favour of granting a temporary injunction.

11. This being a private matter I find what the applicant under the circumstances is entitled to temporary orders of injunction under **Order 40** of the **Civil Procedure Rules** and not conservatory orders since this is not constitutional petition brought under **Article 23** of the **Constitution**. The said orders shall subsist for a period of one year from the date hereof.

12. As regards judgment on account of admission and in default the same is hereby entered against and the defendants. The case shall be listed for formal proof and the plaintiff to comply with **Order 11** of the **Civil Procedure Rules**.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 24TH DAY OF NOVEMBER, 2021

In presence of:

Munene for plaintiff

Defendant in person

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE