



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC ORIGINATING SUMMONS NO. 149 OF 2012

IN THE MATTER OF LAND PARCEL NO. NTIMA/ITOKI/1227

FORMERLY REGISTERED IN THE NAMES OF JUSTUS M'MURITHI M'MBAGIRI

AND

**REGISTERED IN THE NAMES OF JEMA KARIMI MBURUGU, JOYCE KANANA MURITHI, JENADIS NKATHA MURITHI
& FAITH WANJA MURITHI**

JAMES TAITUMU KUBAI.....PLAINTIFF

VERSUS

JEMA KARIMI (Sued as the administratrix of the estate of

JUSTUS M'MURITHI M'MBAGIRI.....1ST DEFENDANT

TERESA MWAKITHI M'MURITHI (Sued as the administratrix of the estate of

JUSTUS M'MURITHI M'MBAGIRI 2ND DEFENDANT

RULING

1. By a further amended notice of motion dated on 26/3/2021, supported by an affidavit of James Taitumu Kubai sworn on even date, the applicant seeks amendment of the originating summons and joinder of the proposed intended 2nd, 3rd and 4th defendants and inhibition orders.
2. The basis of the application is that there are legitimate claims over the additional parties who are now jointly registered in the suit land with the 1st defendant as per attached certificates of search and that it is in the interest of justice and determination of issues under controversy to bring all the parties on board.
3. In the supporting affidavit the applicant avers the suit land has changed hands after a certificate of confirmation of grant was issued regarding the suit land.
4. The application is opposed by the 1st respondent through a replying affidavit sworn on 8.7.2021 on the grounds that the 2nd – 4th intended defendants are her children who are beneficiaries to the estate of the deceased and are lawfully registered after the confirmation of grant. This was after the applicant was found lacking any legitimate claim over the suit land.
5. Further it is averred the applicant is abusing the court process by filing multiplicity of cases namely **Meru ELC No. 45 of 2020**. Additionally, the 1st defendant claims the applicant had sought stay of this matter so as to await the outcome of the succession cause which has now been determined in her favour hence he ought to withdraw this matter.
6. The 1st defendant has filed written submissions dated 21.10.2021 relying on the case of ***Murithi & 2 Others –vs- Dorcas Muthoni Karani & 5 Others [2019] eKLR*** on the proposition that allowing the amendment and joinder of more parties will prejudice her yet there is no legitimate/identifiable interest in the matter.

Similarly the 1st defendant urges the court to decline to grant the prayer for inhibition since the applicant has not disclosed any legitimate interest over the suit land.

7. **Order 1 rule 3 and 6** grants the court powers upon request to allow joinder of defendants where there is a common question of law or fact and where they are likely to be jointly or severally liable.

8. **Order 1 rule 10** allows for substitution or addition of parties to a suit in order to effectually and completely adjudicate upon and settle all questions involved in the suit.

9. Under **Order 1 rule 10 (4)** once a defendant is added the plaint shall be amended and served upon all the parties in line with **Order 8 rule 3, 5 and 7** of the **Civil Procedure Rules**.

10. In the instant case the 1st respondent has admitted the intended defendants are now jointly owning the suit land together with her since the confirmation of grant was issued. A copy of the grant attached to the supporting affidavit confirms those developments.

11. Given the admissions, there is no doubt the proposed 2nd – 4th defendants are now absolute co-owners of the suit land. In line with **Section 25 and 26** of the **Land Registration Act**, the title deed they hold is presumed prima facie prove of ownership. I therefore find that they are essential parties to this suit who will be affected by its outcome.

12. In line with **Article 50** of the **Constitution**; it would be unfair to have this dispute resolved in their absence yet they are likely to be adversely affected by the outcome.

13. Further the right to be heard is a Constitutional right and hence it would be against the rules of natural justice to shut them out yet they have a legitimate stake in the suit land as held in *Mbaki & Others –vs- Macharia & Another [2005] 2 E.A 206* and in *Julius Gatambia & Another –vs- James Macharia Gichure & Another [2018] eKLR*.

14. Turning to the issue of inhibition, **Section 68 (1)** of the **Land Registration Act** grants a court powers to issue an inhibition inhibiting for a particular time or until the occurrence of a particular event, or generally until a further order or the registration of any dealing with any land, lease or charge.

15. In *Dorcas Muthoni & 2 Others –vs- Michael Ileri Ngari [2016] eKLR*, it was held an order of inhibition is similar to a prohibitory injunction which bars a registered owner of property under dispute from registering any transaction over the property until further orders or a suit is disposed off.

16. Before issuance of such an order, there must be a party seeking such orders as held in *Daniel Gitau Kuria –vs- Muthoni Mbugua Ndumo & 3 Others [2021] eKLR*.

17. The applicant's claim is based on adverse possession. It is now admitted that the land has through succession process been shared among the beneficiaries to the estate. Similarly there is evidence the applicant has been removed the occupation and his structures allegedly destroyed. His interests or claim for adverse possession are yet to be determined. The court must be guided by the principle that the court should always take the course that carries the lower risk of injustice as held in *Films Rover International & Others –vs- Cannon Films Sales Ltd [1986] 3 (ALL.E.R 772)*.

18. In the circumstances, my finding is that the applicant has not given any ground why he deserves an inhibition order. The prayer is declined.

19. For avoidance prayer 2 of the further amended notice of motion is allowed. The amended originating summons to be filed and served within 14 days from the date hereof. Prayers 3 and 4 are denied.

20. Costs shall be in the cause.

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

In presence of:

Mrs Muia for plaintiff/applicant

Miss Masamba defendant

Court Assistant Kananu

HON. C.K. NZILI

ELC JUDGE