



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC PETITION NO. E006 OF 2020**

**FERANKLINE MURIIRA M'NKANATA.....PETITIONER**

**VERSUS**

**THE ADJUDICATION OFFICER**

**RUIRI/RWARERA ADJUDICATION SECTION.....1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR MERU CENTRAL DISTRICT.....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**AND**

**ANNAH MWARI MUTUMA.....1<sup>ST</sup> INTERESTED PARTY**

**JACOB KITHAE MAKUNYU.....2<sup>ND</sup> INTERESTED PARTY**

**GACANI MBERIA.....3<sup>RD</sup> INTERESTED PARTY**

**ELIAS MUTHIORA NATHAN.....4<sup>TH</sup> INTERESTED PARTY**

**RULING**

1. By a notice of motion dated **28.10.2021** brought under **Section 68 of the Land Registration Act, Articles 1, 2, 3, 10, 11, 20, 21, 22, 23, 27, 28,47, 50, 73 and 75 of the Constitution and Section 1A, 1B 3 & 3A of the Civil Procedure Act** as well as **Order 51 of the Civil Procedure Rules**, the petitioner/ applicant seeks inhibition and temporary orders of injunction restraining any dealings, efforts of eviction, disposal, issuance of title deeds against the respondents over **Parcels No's 283, 3483, 3484, 3485 and 3486 Ruiru/Rwarera adjudication section** pending hearing and determination of the petition.
2. The application is supported by an affidavit sworn on 28.10.2020 and the grounds that: though the petitioner/applicant is the rightful recorded owner and or occupant of the suit properties, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have illegally amended the adjudication records and inserted the names of the interested parties contrary to the law and his rights under the Constitution. The applicant is therefore threatened with eviction and denial of his possession and occupation rights.
3. Further the applicant states efforts to follow-up the procedures of appeal and objection under the Land Adjudication Act have been unsuccessful out of which he was granted a consent to pursue his rights in court. Further the petitioner alleges 1<sup>st</sup> and 2<sup>nd</sup> respondents are colluding with the interested parties to fraudulently acquire the suit properties in utter disregard of both the law and the Constitution.
4. By a petition dated **28.10.2021** he claims **Parcels No's 3486** were gathered in **1969** by his late father **M'Mkanata M'Chau** from which he inherited but discovered the original Land Parcel (NOT NAMED) was sub-divided into the aforesaid portions.
5. Following discovery (DATE NOT DISCLOSED) the petitioner lodged objection **No's 05, 3382, 3444, 3779 and 473** which were dismissed and ruled in favour of the interested parties.
6. He was subsequently issued with a consent to sue dated 14.1.2020 for injunction against any encroachment over the aforesaid suit land.

7. The main claim therefore is that his constitutional rights under **Article 40 of the Constitution** have been infringed and continue to be infringed hence seeks:

- a) **declaration that the said actions are illegal, wrongful and amount to breach of his ownership rights.**
- b) **He be declared the absolute owner of the suit land**
- c) **Mandamus to issue compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents to amend the adjudication register and record him as the correct owner.**
- d) **Certiorari to quash the registration of the suit land in the names of the interested parties.**
- e) **Mandamus compelling the Land Registrar to register him as the owner of the suit land instead of the interested parties and lastly,**
- f) **Permanent order of injunction restraining the respondents as well as the interested parties from any interference with the petitioner's peaceful, lawful possession and occupation of the suit properties.**

8. The court record shows by 27.10.2021 no replies had been made by both the respondents and the interested parties to the notice of motion and the main petition.

9. Going by the pleadings on record it is apparent the Ruiru/Rwarera Adjudication Process as at 4.05.2018 had reached objection stage. Upon dismissal of the alleged objections the petitioner was given his rights of appeal exercisable within sixty days. In both the petition and the notice of motion, it is not clear if the petitioner exercised such rights and lodged an appeal to the Minister as required under **Section 26** of the **Land Adjudication Act**.

10. Under the **Land adjudication Act** once a party has lodged an appeal with the Minister and the same is determined, one way or the other, he still has another right to move to the High Court for redress by way of judicial review.

11. My reading and understanding of both the **Land Adjudication Act** and **Fair Administrative of Actions Act 2015** is that the fact that one is claiming infringement of his constitutional rights does not replace the invocation of the internal dispute mechanism as set out in the **Land Adjudication Act**. Indeed **Article 159 (2) (d)** is couched in mandatory terms that courts must encourage parties to resort to alternative dispute resolution. This position has been affirmed by the Supreme Court of Kenya in the *Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank Ltd. & 2 Others [2012] eKLR and Speaker of National Asembly-vs- James Njenga Karume [19920 eKLR.*

12. The applicant herein seeks orders of inhibition under **Section 68** of the **Land Registration Act**. The **Land Registration Act 2012** comes into place only after the adjudication register has been certified complete and the records forwarded to the Chief Land Registrar by the Director of Land adjudication for issuance of title deeds.

13. The consent giving the petitioner rights to sue is given by the Sub-County Land Adjudication and Settlement Officer for properties described as Land Parcel No's 283, 3483, 3484, 3485 and 3486 Ruiru/Rwarera adjudication section falling under **Cap 284** as at 14.1.2020.

14. The supporting affidavits do not state if any title deeds have been issued and or whether the adjudication register has been declared complete under **Section 26** of the Land Adjudication Act. It would therefore be premature for the applicant to seek and be granted such orders under a law which does not govern the suit land at the moment.

15. Further, the court is being asked to issue temporary injunctive orders against the 2<sup>nd</sup> respondents. Again as I have stated above, the petition and the notice of motion do not state what role the 2<sup>nd</sup> respondent has played with regard to suit land. The role of a land registrar is governed by the Land Act and Land Registration Act as opposed to **Land Adjudication Act**.

16. This court would be going against the letter and spirit of the Constitution to issue orders of temporary injunction against a party whose jurisdiction does not cover the subject property.

If the applicant was seeking for conservatory orders, perhaps the court would have considered such a request which is not the case in this petition.

17. Given the foregoing reasons, it is my considered view that the application dated 28.10.2020 lacks merit. The same is dismissed with costs to the respondents and the interested parties.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2021**

**In presence of:**

Miss Gitonga holding brief for Maranya for petitioner

Kimathi for 3<sup>rd</sup> and 4<sup>th</sup> respondents

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**