



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PETITION NO. E005 OF 2020

IN THE MATTER OF BREACH OF THE CONSTITUTION AND ESPECIALLY ARTICLES 1 (1)B, 1 (4) (B), 2, 3, 6, 10, 12, 19, 20, 21, 22, 23, 24, 27, 28, 40, 47, 48, 50, 60, 61, 64, 66, 68, 73, 75, 77, 174, 175, 185 AND 197 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 24, 25 AND 78, 79 OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF ARTICLES 2, 3, 4, 7, 13 AND 19 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS AND OTHER PROVISIONS THEREOF

AND

IN THE MATTER OF THE LAND REGISTRATION ACT AND THE LAND ACT

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULE 2013, SECTION 4

BETWEEN

MICHAEL MUGAMBI MURUKAPETITIONER

VERSUS

THE LAND REGISTRAR TIGANIA EAST DISTRICT.....1ST RESPONDENT

THE ADJUDICATION OFFICER, KARAMA ADJUDICATION SECTION.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

AND

JOSPEH M'IMUNYUA MURUKA.....1ST INTERESTED PARTY

PETER MILIONEA2ND INTERESTED PARTY

GERVASIO KAKAMBI THITURA.....3RD INTERESTED PARTY

RULING

1. Before the court is an application dated **29.10.2020** seeking for inhibition orders and a temporary injunction over **Parcels No. 4787 Karama Adjudication Section**.

2. The application is supported by an affidavit sworn on 29.10.2020 based on the grounds that a consent to sue dated 18.8.2020 was issued by the second respondent confirming the suit land is undergoing adjudication.

3. The application is opposed by the interested parties on the grounds that an objection was lodged and dismissed; that there are three parcels of land namely 557, 5181 and 2763 Karama Adjudication section to which the petitioner trespassing into and making illegal developments to the detriment of the interested parties.

4. **Section 68** of the Land Registration Act empowers a court to grant inhibition orders over registered lands. In the instant case, it is clear the subject land is governed by the **Land Adjudication and Consolidation Act Cap 283 and 284** Laws of Kenya respectively. The consent issued to sue is given by the 2nd respondent or their officer and has clearly indicated subject land is within their jurisdiction and not the 1st respondent.

5. The replying affidavit by the 3rd interested party annexure marked **GKT 1 & 2** states the Adjudication Process is at A/R stage. There is a laid down procedure under the **Land Adjudication Act** on which any aggrieved party must follow so as to have the complaint determined. The applicant has not disclosed whether he invoked those procedures before coming to court.

6. In the premises, it is my considered view it would be premature for this court to issue inhibition orders on a law which does not govern the subject land. The prayers are rejected.

7. Regarding prayers for temporary injunction, the applicant has to establish a prima facie case with a probability of success and that he stands to suffer irreparable damage if the orders are not granted and lastly that the balance of convenience tilts in his favour.

8. Given my finding above that there are laid down procedures for alternative dispute mechanisms under the **Land Adjudication Act, Article 159** of the **Constitution** mandates this court to respect and encourage such mechanisms. It would therefore be premature for this court to encourage the applicant to ignore such laid down procedures as provided for under **Section 9 (3) of the Fair Administrative Actions Act 2015**. The court can only do so if there are exceptional circumstances.

9. In the instant application, no exceptional circumstances have been demonstrated to exempt the applicant from the provisions of appeal set out under the **Land Adjudication Act**. The application lacks merit and is hereby dismissed with costs to the respondents and interested parties.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 17TH DAY OF NOVEMBER, 2021

In presence of:

ANAMPIU FOR INTERESTED PARTY

KIMATHI FOR RESPONDENT

MISS GITONGA FOR APPLICANT

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE