



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE E015 OF 2021

CORNELIUS MUTHURI MWEGA.....PLAINTIFF

VERSUS

STANELY KAILUTHA..... 1ST DEFENDANT

KANYILI FRANCIS..... 2ND DEFENDANT

BERNARD KIMATHI 3RD DEFENDANT

GEOFFREY ABURUKI..... 4TH DEFENDANT

JOSEPH MUGAMBI.....5TH DEFENDANT

RULING

1. The notice of motion dated **21.4.2021** seeks temporary orders of injunction barring and restraining the respondents from entering, trespassing, cultivating, alienating, constructing or in any other way whatsoever interfering with the plaintiff's quiet enjoyment use and occupation of **Parcel No. Ruiiri/Rwarera/2247** pending hearing and determination of this suit.
2. The second prayer is that sub-County police commander Buuri West to enforce compliance with the order.
3. The application is supported by grounds on the face of the notice of motion and a supporting affidavit by **Cornelius Muthuri Mwega** sworn on **25th April, 2021**.
4. The application was duly served upon the respondents but no replying affidavit or grounds of opposition have been filed. In ***Mrao Ltd –vs- First American Bank of Kenya Ltd & 2 Others [2003] eKLR*** the Court of Appeal held a prima facie case is established if on the material prosecuted points the court conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.
5. Turning to the instant application, the applicant has narrated he acquired the suit property for value through purchase on 8.10.2013 from the estate of the late Justus Mbaabu M'Mwithimbu, subsequent to which he was adjudicated the land as per the Sub-County Land Adjudication & Settlement officer Imenti North/South/Central and Buuri's letter dated 26th August, 2019; the applicant has also attached a copy of a title issued on 9th January, 2019 which under **Section 26 of the Land Registration Act 2012**, is a prima facie evidence on ownership.
6. There is no replying or defence to the suit by the defendants questioning the manner of acquisition and registration of the suit land in favour of the applicant.
7. In the circumstances it is my considered view the rights of the applicant under **Article 40 of the Constitution** as read together with **Order 40 of the Civil Procedure Rules** have been violated. The application is allowed in terms of prayer No's 3 & 4 pending hearing and determination of this suit. The suit is listed for pretrial directions within 45 days from the date hereof otherwise the orders shall automatically lapse.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 10TH DAY OF NOVEMBER, 2021

In presence of:

Ashaba holding brief for E.G. Mutuma for applicant

Court Clerk: Kananu

HON. C.K. NZILI

ELC JUDGE