



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

PETITION E018 OF 2021

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 40,
47, 258 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF SECTIONS 7, 15, 16020, 21, 23, 24 AND 27 OF THE LAND CONSOLIDATION ACT CAP 283 LAWS OF
KENYA**

AND

IN THE MATTER OF SECTION 80, 26 (A) (B) OF THE LAND REGISTRATION ACT

AND

IN THE MATTER OF SECTION 7 OF THE LAND ACT NO. 6 OF 2012

AND

IN THE MATTER OF ENVIRONMENT AND LAND ACT 2011

BETWEEN

DOMIZIANO M'CHOKERA RATANYA.....PETITIONER

AND

THE LAND ADJUDICATION AND SETTLEMENT OFFICER TIGANIA

WEST 1ST RESPONDENT

THE LAND ADJUDICATION & SETTLEMENT OFFICER URINGU 1

ADJUCIATION SECTION 2ND RESPONDENT

THE DISTRICT LAND REGISTRAR TIGANIA WEST ..3RD RESPONDENT

DIRECTOR OF SURVEY4TH RESPONDENT

CHIEF LAND REGISTRAR 5TH RESPONDENT

THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

AND

ERESTUTO M'MUKIRI..... 1ST INTERESTED PARTY

RULING

1. The petitioner's application dated 8.6.2021 seeks temporary orders of injunction barring and restraining the respondents from in any way whatsoever interfering with **Parcel No. Nyambene/Uringu/3420 and 3421** pending hearing and determination of this petition.
2. The application is supported by an affidavit sworn by Domiziano M'Chokera Retanya on the grounds that he gathered the land measuring approximately 10.70 acres in 1967 and an allotment letter was issued to him after the land consolidation being **Parcel No. Nyambene/Uringu/98** which he has been occupying throughout without any interference.
3. The avers interested parties colluded with the respondents and have subdivided his land, created new **Parcel Numbers 3420 and 3421** which are registered under the interested parties' names.
4. Further the petitioner states the adjudication register and maps have been altered to include the subdivisions and that the interested parties are threatening to evict him yet he has extensively developed his land with his homestead therein.
5. The petitioner avers the interested parties have trespassed into his land and are looking for prospective buyers to dispose off the land to third parties.
6. The respondents oppose the notice of motion through grounds of opposition dated 21.10.2021.
7. It is averred the applicant has failed to disclose material facts that he had filed a judicial review namely **Meru High Court No. 23 of 2008** to quash objection proceedings regarding the suit land.
8. Secondly that the appellant has failed to disclose when the title deeds to the subdivisions were issued.
9. Third it is averred the application ought to fail since the proper cause would have been to seek for the cancellation of the title deeds through a civil case for evidence to be adduced and not through a petition.
10. Fourth it is stated the applicant is guilty of indolence and laches and hence ought to have exhausted the internal mechanisms under the **Land Consolidation Act**.
11. Fifth, it is averred the applicant has failed to attach vital maps to reinforce his position.
12. Sixth, it is stated the issues are about a boundary and he has not invoked **Section 18** of the **Land Registration Act** hence the court has no jurisdiction to entertain the suit.
13. As regards the interested parties the application is opposed through a replying affidavit sworn by the 1st interested party on 25.8.2021 giving the reasons that: the land claimed by the applicant initially belonged to his grandfather M'Ibui M'Thanyaku whose three sons during the gathering in 1050, requested the petitioner to do so on their behalf as the only educated member of their family. That the petitioner was registered in trust for the rest of the family through the gathering and adjudication stage.
14. That after the publication of the closure of the adjudication an **A/R objection No. 2726 of 1994** was lodged awarding the applicant 5.10 acres, 1st interested party's father 3 acres and the 2nd interested party's father 2 acres hence the creation of **Parcel No's 5420 and 3421** which decision the applicant was never appealed against until the demand letter dated 18.3.2021.
15. Further the 1st and 2nd interested parties state they have also been in occupation of their parcels since 1960's and it is the applicant who has trespassed into their parcels.
16. Additionally it is averred the entire land was subject to litigation in **Meru Judicial Review No. 23 of 2008** which led to appeal **No. 190 of 2019** before the Court of Appeal Nyeri.
17. Again the 1st and 2nd interested party state **Parcel No's 3420 and 3421** have been subject to succession cause leading to certificate of confirmation of grant.
18. In sum the interested parties submit the suit is res judicata, an abuse of the court process and hence the applicant does not merit the orders sought.
19. Having looked at the pleadings and the submissions by the rival parties, the issues for determination are:-
 - a. **If the applicant is entitled to temporary orders.**
 - b. **If the issues before the court are subjudice or res judicata.**
20. There is no dispute that the applicant is a recorded owner of Parcel No. 98 as per the letter dated 7.12.1994 and that he has been in

occupation throughout hence the reason the interested parties have written a demand dated 18.3.2021 to vacate the land. Further the applicant has attached copies of photographs on the suit land showing developments therein.

21. On the other hand the respondents and the interested parties oppose the application on the basis that the subject issues have been litigated both through a judicial review and a succession cause which the applicant has failed to disclose and hence urge the court to find the application unmerited.

22. The court has gone through the judgment in **Meru ELC J.R. 23 of 2008** and which is before the (Court of Appeal). The court struck out the notice of motion and did not determine the issues on merits hence the appeal in the Court of Appeal. **See Section 19 (1) and (3) of the Environment and Land Court Act. D.T. Dobie & Co. Ltd –vs- Joseph Mbaria Muchina & Another [1980] eKLR.**

23. Secondly at the time the title deeds had not been issued as in the instant case and similarly the parties are not the same as in the current suit. **See Uhuru Highway Development Ltd. –vs- Central Bank of Kenya & Others (Unreported).**

24. Further the applicant was challenging the objection proceedings at the adjudication stage whereas in the current suit there are issues of subdivisions from **Parcel No. 98.**

25. In my considered view all these issues shall be determined at the hearing.

26. At this preliminary stage, the applicant has to establish a prima facie case with a probability of success, that he shall suffer irreparable loss and damage if the injunction is not issued and lastly that the balance of convenience tilts in favour of granting the injunction. **Giella – vs- Cassman Brown [1973] E.A 358 and Board of Management of Uhuru Secondary School –vs- City County Director of Education & 2 Others [2015] eKLR.**

27. On the first limb, the applicant has produced documentation from the 1st and 3rd respondents confirming a legitimate interest over **Parcel No. Nyambene/Uringu 1/98** which has been subdivided to create **Nyabene/Uringu 1/3420 and 3421** in favour of the interested parties who however allege the issue is merely on their boundaries as neighbours.

28. The applicant has also pleaded he has been in occupation but is now faced with demand letters to grant vacant possession to the interested parties.

29. In my view the applicant has demonstrated a legitimate right over the suit land which calls for protection by way of temporary injunction pending hearing of the petition. **See Mrao Ltd –vs- First American Bank of Kenya Ltd [2003] KLR 125.**

30. Secondly the applicant has demonstrated he has been in occupation with developments on the land which the respondents and the interested parties are aware of. There is no demonstration by the interested parties that they ever sought for the applicant to stop any further developments over the land even at the stage they raised objection proceedings with 1st and 3rd respondents. **See Robert Mugo Wa Karanja –vs- Eco Bank (K) Ltd & Another [2019] eKLR.**

31. Lastly, the applicant has also demonstrated that he stands to suffer irreparable loss and damage which may not be compensated by way of damages if his developments on the suit land were to be pulled down and or demolished in the course of the eviction. **See Ngurunam Ltd - vs- Jan Bonde Nielsen & Another [2014] eKLR.**

32. In sum I find that the interest of justice would be served by preserving the subject suit land as at the time of this filing of the petition by granting prayers No. 3 and 5 in the application for a period of one year from the date hereof.

33. The applicant shall file before the court an undertaking as to damages for a sum of Kshs. 10,000,000/= within 7 days from the date thereof.

34. The respondents and the interested parties are granted leave to file their answers to the petition within 30 days from the date hereof following which there shall be compliance with Order 11 within 60 days.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20TH DAY OF DECEMBER, 2021

In presence of:

Mbubuya for petitioner

Muna for interested parties

Kieti for 1st to 6th respondents

Court Assistant – Kananu

HON. C.K. NZILI

