



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC NO. 81 OF 2012**

**JAPHET KAIMENYI NDATHO.....PLAINTIFF**

**VERSUS**

**MBIJIWE MARANGU MUCHIRI.....RESPONDENT**

**RULING**

1. The application before court is the one dated 18.8.2021 seeking for the discharge of inhibition order issued against L.R Abothuguchi/Lower/Kaongo/514. The application is supported by an affidavit by Japhet Kaimenyi Ndatho sworn on the even date.
2. The grounds upon which the application is made are that the applicant was 2<sup>nd</sup> defendant in the suit where the inhibition was issued in favour of the plaintiff. Secondly, the suit was heard and determined on 26.10.2015 yet he continues to be inconvenienced by the subsisting orders. When the matter came up for hearing on 28.10.2021, Mr. Riungu Advocate for the plaintiff submitted the application is brought by a different person from the plaintiff in the suit.
3. Counsel urged the court to look at the pleadings and notice the plaintiff in the suit was Mbijiwe Marangu now deceased and was replaced by Japhet Ngugi Mbijiwe while the defendants were three in number among them the applicant.
4. Further counsel submitted the application was not well titled and that there was no indication whether he had served all the parties in the matter with the application.
5. Counsel went on to submit the applicant had not attached any inhibition order issued so as to assist the court make a proper determination.
6. Additionally, counsel submitted that though the decree had been issued on 21.2.2018, the land had not been decreed to the applicant but someone else.
7. In reply, Japhet Ndatho the applicant submitted in the determination made on 26.10.2015, the land was his together with one Francis Kaburu.
8. The court record indicates the applicant herein was the 2<sup>nd</sup> defendant in the suit whose advocates on record are M/S Gichunge Muthuri & Co. Advocates.
9. By a decree issued on 3.12.2018, the suit land was decreed to the plaintiff on account of adverse possession and the Land Registrar was ordered to replace the names of Japhet Kaimenyi Ndatho and Fancis Kaburu M'Marete with that of Mbijiwe Marangu with a further order that the two do execute all relevant documents to facilitate the transfer of the suit land in favour of the plaintiff in default the Executive Officer of the court to execute them.
10. The record further shows the plaintiff passed on and was replaced with one Judith Ngugi Mbijiwe.
11. From the record the court has not come across any notice to act in person filed by the 2<sup>nd</sup> defendant so as to have the capacity to file the instant application. In my considered view the 2<sup>nd</sup> defendant has counsel on record who has also filed an appeal on his behalf to the Court of Appeal.
12. In view of the foregoing, my finding is that the application is not only improperly titled but also filed by a person without capacity.
13. Moreover, there is no affidavit to show that all parties to the matter have been served with the application.

14. In the circumstances, the court finds the application bad in law. The same is struck out with no order as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**In presence of:**

Kimathi holding brief for Riungu for respondent

Plaintiff in person

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**