



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC NO. 33 OF 2021**

**SILAS KIRIMI SAMWEL ..... PLAINTIFF**

**VERSUS**

**JOHN MURIIRA RIUNGU ..... 1<sup>ST</sup> DEFENDANT**

**DAVID MUCHAI SAMWEL ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH KIOGORA ..... 3<sup>RD</sup> DEFENDANT**

**SUSAN KENDI KIRIMI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By a notice of motion dated 1.11.2021 the applicant seeks for inhibition orders over **L.N Ntima/Nkariua/700** and a temporary injunction over **L.R Ntima/Nkariua/700** pending hearing and determination of this suit. The application is supported by the applicant's affidavit sworn on 1.11.2021.

2. The grounds are that the suit land is registered under the name of Silas Kirimi Ngatuni having acquired it by virtue of a decree of this court following a judgment made on 11.8.2018 but has passed on 15.7.2021.

3. However it is averred upon his death the property was allegedly transferred to the defendants on 26.8.2021.

4. For a party to be entitled to temporary injunction he has to establish a prima facie case with a probability of success at the hearing. Secondly he has to establish he is likely to suffer irreparable loss and damage which may not be compensated by way of damages and lastly that the balance of convenience tilts in favour of granting the orders. See ***Giella –vs- Cassman Brown [1973] EA 358***.

5. In this case, the deceased was granted the suit land through a regular decree of this court and judgment to which he was registered as the owner. How the changes were effected over the title especially so soon after his death are circumstances which shall be interrogated at the hearing.

6. The respondents though served have not opposed the orders sought.

7. The applicant has established a right to ownership which under **Article 40** of the **Constitution** as read together with **Order 40** of the **Civil Procedure Rules** requires protection as held in ***Mrao Ltd v. First American Bank of Kenya Ltd and 2 Others [2003] eKLR***.

8. Similarly under **Section 68** of **Land Registration Act**, the court is granted powers to issue orders for the preservation of the suit land on deserving cases such as this one where it is apparent there are issues requiring determination during the hearing.

9. The circumstances as set out in the application and the supporting affidavit in my considered view call for the preservation of the property. I allow the application in terms of **prayers 3 and 4** for a period of one year.

Orders accordingly.

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

**In presence of:**

Wambua for respondents

Karanja for applicant

Court Assistant – Kananu

**HON. C.K. NZILI**

**ELC JUDGE**