



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. E024 OF 2021

ANTONY MUTHURI M'ITWAMWARI.....PLAINTIFF

VERSUS

MARKO KIAMBI ABWITHIA.....DEFENDANT

RULING

1. Before the court is an application seeking inhibition and temporary injunction orders over **Parcel No. Abothuguchi/Gitie/635** pending hearing of the suit.
2. The application is supported by an affidavit sworn on 15.10.2021 by Antony Muthuri M'Itwamwari who states he has been occupying a half acre of the land since 1999 which he has developed extensively through farming activities.
3. It is the plaintiff's contention the defendant has declined to transfer the portion and is apprehensive he may transfer the entire lands to third parties so as to defeat his claim. Though served the respondent has not put in any replying affidavit.
4. Be that as it may, the claim before the court is through an originating summons dated 1.10.2021 attached to which is a sale agreement dated 2.11.1999, certificate of official search and a demand letter dated 13.9.2021 acknowledging the applicant has been in occupation since 1999.
5. Looking at the sale agreement it is clear the applicant has some legitimate claim over suit the land which ought to be protected by the law.
6. In *Mrao Ltd. -vs- First American Bank of Kenya Ltd. & 2 Others [2003] eKLR* a prima facie case was said to be one in which on the material presented to the court or tribunal, properly directing itself, will 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 opposite party.
7. The applicant has in my view demonstrated the right to occupy the suit land and hence established a prima facie case with a probability of success.
8. As regards inhibition, **Section 68** of the **Land Registration Act 2012** grants the court powers to issue such orders to preserve the subject land pending hearing.
9. In the instant case, the search shows the land is in the name of the defendant. **Article 159 (1) (d)** of the **Constitution** enjoins the court to do substantive justice. The fear by the applicant is not far-fetched given the threat of the letter dated 13.9.2021 alleging he is a mere trespasser.
10. I am satisfied the applicant has good grounds to seek such an order so as to preserve the property in dispute.
11. The application is therefore allowed but the orders shall only subsist for a period of 12 months. The applicant shall file an undertaking as to damages of Kshs. 200,000/= within 7 days from the date hereof. The applicant shall also set down the suit for case conference within 45 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 1ST DAY OF DECEMBER, 2021

In presence of:

Mukanguru for plaintiff/applicant

P.M. Manjau for the defendant – absent

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE