



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 30 OF 2013

IN THE MATTER OF THE ESTATE OF ELIJAH NGARI alias NGARI NGOTHO...DCD

AND

CATHERINE NJERI NGOMBO.....1ST APPLICANT

DAN KINYUA NGOMBO.....2ND APPLICANT

CHARLES NYAMU NGOMBO.....3RD APPLICANT

RICHARD MAINA NGOMBO.....4TH APPLICANT

CHARLES MWANGI NGOMBO.....5TH APPLICANT

RULING

1. The applicant has filed an application dated 25/06/2018 seeking inhibition orders be issued against any transaction relating to **L.R No. Mwerua/Gikaku/96** and status quo on the possession of **L.R No. Mwerua/Gikaku/96** be maintained pending hearing and determination the application for revocation of grant.

2. The grounds are that the grant was obtained fraudulently by failing to disclose the applicants are survivors and dependants of the estate of the deceased and they occupy and have developed **L.R No. Mwerua/Gataku/96**. That the grant was issued without notice of or citation issuing to the applicants and the applicants were disinherited by the fraudulent acts of the respondent.

3. That the deceased was their grandfather who had 6 children including the respondent and their father Abednego Ngombo. Their father who is deceased had two wives Kagio Ngombo and Teresiah Wamuyu and he had 13 children. That they have always lived on the said parcel of land together with their families. That their mothers and brother David Maina Ngombo are now deceased and the respondent recognized them as beneficiaries of the deceased's estate vide her affidavit dated 08/02/2006. Later in 11/06/2016, the grant was confirmed that the said beneficiaries were excluded. The respondent and other beneficiaries are now threatening them with eviction whereupon they will suffer substantial loss and damage.

4. In response, the respondent stated that the applicants are not children of the deceased and therefore not beneficiaries of the estate. When they filed the case, the applicant's mother was alive and she participated in the initial confirmation. The estate has now been confirmed and the applicants' father's share is held by their brother Joseph Murimi Ngombo and they should pursue their father's share from him. That he certificate of confirmation has been fully executed and new titles issued.

I have considered the application.

5. Section 68(1) of the Land Registration Act.

The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.

6. These provisions give court discretion to issue orders which are in the nature of an injunction restraining dealings on land pending further orders by the court. The Section is meant to preserve the property from acts that would otherwise render a court order incapable of being executed and or to give an opportunity to hear and decide the matter. It is therefore necessary to preserve the status quo pending the hearing

and determination of the issue before court.

7. In **Mwambeja Ranching Company Limited & another v Kenya National Capital Corporation Limited (Kenyac) & 6 others [2015] eKLR** F. Gikonyo Judge held the view that orders of inhibition envisaged under section 68 of the Registration of Land Act are in the nature of prohibitory injunction and act to preserve the suit property just as an interlocutory injunction would do. He stated;

Of great significance on the request for an order of inhibition is Section 68(1) of the Land Registration Act which reads as follows; The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge. The case of *Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria [2012] eKLR* dealt with the threshold for granting orders of inhibition in a pointed manner as follows; "In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-

a. That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless Preservatory orders of inhibition are issued.

b. That the refusal to grant orders of inhibition would render the applicant's suit nugatory.

c. That the applicant has arguable case."

I am content to refer to the decision by Okwengu, J (as she then was) in the case of *Philip Mwangi Githinji v Grace Wakarima Githinji (2004) eKLR* when she rendered herself inter alia; "An order of inhibition issued under section 128 of the Registered Land Act is akin to an order of prohibitory injunction for it restricts the registered owner and any other person from having their transaction regarding the land in question registered against the title. Before the court can issue such an order it must be satisfied that the person moving the court for such orders has good grounds for requesting such an inhibition, such grounds would normally be in the form of a sustainable claim over the suit land."

I find that this sets out the correct position for issuance of prohibition orders where the applicant has a claim which has not been determined

8. The applicants have proven that they reside on the suit premises and if they are evicted the application for revocation will be rendered futile. The application seeking orders of inhibition and status quo to be maintained should be allowed pending hearing and determination of the summons for revocation of grant.

9. I find that the application has merits. I allow the application and order as follows:-

a) There be an order of inhibition against any transactions relating to LR. Mwerua/Gikaku/96 pending the hearing and determination of the prayer for revocation and/or annulment of grant issued to Elizabeth Wambui Ngari and confirmed on 11th July 2016.

b) Costs shall be in the cause.

Dated at Kerugoya this 7th day of February 2019.

L. W. GITARI

JUDGE