



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERUGOYA**

**ELC CASE NO. 25 OF 2019**

**JACKSON KARIUKI GIKANDO**

**(Suing as the Administrator of the Estate of NJINE MWARA.....PLAINTIFF**

**VERSUS**

**FRIDAH GACHERI KIRIMI.....1<sup>ST</sup> DEFENDANT**

**STEPHEN NDEGWA MWANGI.....2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KIRINYAGA COUNTY.....3<sup>RD</sup> DEFENDANT**

**RULING**

The application before me is the Notice of Motion dated 2<sup>nd</sup> July 2019 brought under **Order 40 Rule 1 (a), 2 & 4 (1) CPR and Section 1A, 1B, 3A and 63 CPA, Section 68 and 69 of the Land Registration Act**. The applicant sought the following orders:

**(1) Spent.**

**(2) Pending hearing of this application, an order of inhibition do issue restraining any dealings whatsoever with land parcel No. NGARIAMA/MERICHI/461.**

**(3) That pending hearing and determination of the suit , an order of inhibition do issue restraining any dealings whatsoever with land parcel No. NGARIAMA/MERICHI/461.**

**(4) That costs of this application be provided for.**

The application is based on grounds apparent on the face of that application supported by the affidavit of the applicant sworn the same date.

The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents who filed a Notice of Preliminary Objection dated 12<sup>th</sup> July 2019. The said Notice of Objection states as follows:

**(a) That this suit is incompetent, a non-starter, scandalous, vexatious and otherwise an abuse of the Court process.**

**(b) That this Honourable Court does not have the requisite jurisdiction to entertain the matter as the same offends the direct provisions of Section 7 of the Court Procedure Act cap 21 Laws of Kenya and also provision of Article 159 of the Constitution of Kenya 2020.**

**(c) That the 3<sup>rd</sup> defendant is unlawfully and irregularly sued in contravention of the mandatory provisions of Registered Land Act No. 3 of 2012 Section 30 (1), Section (12) and (13) of the Registered Land Act No. 3 under Rule 10.**

**(d) The suit has not disclosed any cause of action on the part of the 3<sup>rd</sup> respondent, as the said respondent executed what was presented before him/her, therefore the suit herein has no clear and practicable pray sought therefore however invites the Court to act in vain whereas the Court cannot act in vain.**

## APPLICANT'S CASE

The applicant stated that he is the administrator of the Estate of Njine Mwara (deceased) vide a grant issued on 13<sup>th</sup> May 2020. He further stated that in the process of collecting the assets of the Estate of the said Njine Mwara, he came across entries on land parcel No. NGARIAMA/MERICHI/461 that dispossess the said Estate. He further stated that he also came across another certificate of confirmation of grant that had been issued to one Francis Njeru Njine that caused a registration of a transmission as evidenced by entries No. 3, 4 and 5 of the green card which was annexed to the supporting affidavit and marked JKG 2. The applicant also contends that he moved the Court for revocation of the said grant vide a ruling in Nyeri High Court dated 2<sup>nd</sup> October 2007. The said ruling was also annexed as JKG 4. The applicant further stated that he presented the Court order to the Land Registrar which registered it as entry No. 6 on the green card thus caused the effect of canceling the entries No. 3, 4 and 5 and therefore having the property revert back to the Estate of Njine Mwara (deceased). He stated that consequently thereafter, a certificate of grant was issued to her and Mary Kanini Njine (deceased) and subsequently registered as against the title in Succession Cause No. 289/2009 (Embu). The applicant stated that pursuant to the said grant, entries No. 7 & 8 on the green card were made on 13<sup>th</sup> May 2010 and an entry No. 9 was made vacating entries No. 6, 7 & 8 vide a Court order dated 6<sup>th</sup> February 2014 issued in Misc. Application No. 122 of 2002 (Nyeri). The applicant further contends that the order of 6<sup>th</sup> February 2014 ousted the ruling dated 2<sup>nd</sup> October 2007 revoking the grant issued to Francis Njeru Njine. The applicant further deposed that the import of revoking the grant is that it revokes even the registration that were made pursuant to it. He stated that consequently thereafter, the certificate of grant that was issued to him and Mary Kanini Njine (deceased) was registered as against the title pursuant to Succession Cause No. 289 of 2009 (Embu). He stated that entries No. 7 & 8 on the green card were made pursuant to the certificate of grant issued on 13<sup>th</sup> May 2010 issued to him and his co-administrator (now deceased) which is still in existence to date. consequently, another entry was created being entry No. 9 vacating entries No. 6, 7, & 8 vide a Court order dated 6<sup>th</sup> February 2014 in Misc. Appl. No. 122 of 2002 (Nyeri). He stated that the said order dated 6/2/2014 ousted the certificate of grant issued to him and his co-administrator on 13<sup>th</sup> May 2010 without the due process.

He stated that the order dated 6<sup>th</sup> February 2014 which was obtained subsequent to the High Court order issued on 9<sup>th</sup> October 2007 is *functus officio*. The applicant further contends that the grant issued on 13<sup>th</sup> May 2010 and dated 11<sup>th</sup> November 2010 can only be ousted by way of revocation which has never been granted. He stated there has been more entries to the register in respect of the suit property being entry No. 11, 12 and 13 pursuant to a transmission which transmission he believes is suspect as there is no other grant in relation to the suit land. He stated that they have since written to the Land Registrar Kirinyaga County to explain the succession cause that affected a registration on the land parcel No. NGARIAMA/MERICHI/461 entry No. 11, 12 & 13. The applicant contends that this Court is seized with the requisite jurisdiction pursuant to Sections 68 and 69 of the Land Registration Act No. 3 of 2012 to grant the orders sought.

## 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENT'S CASE

The respondents filed a Notice of Preliminary Objection and a replying affidavit sworn by the 1<sup>st</sup> respondent. According to the respondents, this Honourable Court has no jurisdiction to entertain this matter as the same offends the provisions of **Section 7 CPA and Article 159 of the Constitution**. The respondents also contend that all the entries concerning the green card attached to the supporting affidavit were vacated pursuant to a Court order issued by a Court of competent jurisdiction. They contend that there was no justiciable cause for the plaintiff/applicant to be issued with the grant on 13<sup>th</sup> May 2010 which was confirmed on 11<sup>th</sup> November 2010 as the plaintiff Jackson Kariuki Gikandu is not a dependant of the Estate of Njine Mwara under Section 29 of the Succession Act Cap. 16 Laws of Kenya. The respondent further contend that the only surviving beneficiary of the Estate of Njine Mwara is his son Francis Njeru Njine and one wife Mary Kanini Njine alias Kanini Njine Mwara. It is further stated that the 1<sup>st</sup> and 2<sup>nd</sup> defendants have been issued with a certificate of title of the suit land by a competent Court in Succession Cause No. 366 of 2011 (Embu) and that the sanctity of their title is protected by the law under Section 26 of the Land Registration Act No. 3 Laws of Kenya.

## ANALYSIS AND DECISION

I have considered the Notice of Motion dated 2<sup>nd</sup> July 2019, the affidavit evidence both in support and in opposition thereto. The applicant is seeking an order of inhibition to issue restraining any dealings whatsoever with land parcel No. NGARIAMA/MERICHI/461. **Section 68 (1) of the Land Registration Act (No. 3 of 2012)** provides 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”.***

Parliament did not give guidelines or circumstances under which the Courts may grant such orders. My interpretation is that such an order can be issued to protect the sanctity of title issued to a proprietor of land under **Section 26 of the Land Registration Act** as read with **Article 40 of the Constitution of Kenya, 2010 and Order 40 CPR Cap 21 laws of Kenya**. A party seeking a relief in the nature of an inhibition must therefore bring himself within the principles for the grant of injunction orders. It follows therefore that an applicant must establish a prima facie case, demonstrate that unless the order is granted, he will suffer irreparable injury from which an award of damages cannot be adequate and lastly, where the Court is in doubt, it may decide the matter on a balance of convenience. The certificate of title in respect of the suit land parcel No. NGARIAMA/MERICHI/461 is non-existent as the same was closed on partition after sub-division into parcel Nos. NGARIAMA/MERICHI/742 and subsequent sub-division into NGARIAMA/MERICHI/1416 and 1417 respectively. It is also clear from the affidavit evidence that the suit property was distributed after determination of Succession Cause No. 122 of 2002 and Misc. Application No. 4 of 2014 (Nyeri). The green cards, the certificate of official search and the certificate of title indicate that the resultant titles to the original title parcel No. NGARIAMA/MERICHI/461 are registered in the name of the defendants. The plaintiff/applicant is not registered as proprietor of any of the resultant titles to the suit land. The applicant has not satisfied this Honourable Court on the principles for the grant of the orders sought. In the result, therefore, the Notice of Motion dated 2<sup>nd</sup> July 2019 lack merit and the same is hereby dismissed with costs to the defendant/respondent.

Regarding the Preliminary Objection raised, the same is not upheld. It is so ordered.

**READ, DELIVERED and SIGNED in open Court at Kerugoya this 13<sup>th</sup> day of March, 2020.**

**E.C. CHERONO**

**ELC JUDGE**

*In the presence of:*

1. *Mr. Ndegwa for Plaintiff*
2. *Respondent – absent*
3. *Mbogo, Court clerk – present*