



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

CIVIL SUIT NO. 100 OF 2002

**HENRY NDUMBA (Suing as the legal representative of the
Estate of MWIRICHIA M'ANGARE).....PLAINTIFF**

VERSUS

M'IBIRI M'MBOGORI 1ST DEFENDANT

JUSTUS MURUGA M'IKIUGU2ND DEFENDANT

STANDARD CHARTERED BANK.....3RD DEFENDANT

RULING

1. This ruling is in respect of the application dated 22.11.2019 filed by the 1st defendant which is brought under the following provisions of law: Section 1A, 1B and 3A of the Civil Procedure Act cap 21 of the laws of Kenya, Section 3 and 9 of the Environment and Land Court Act No. 19 of 2011, section 70 of the land registration Act, 2012 and order 51 rule 1 of the Civil Procedure rules.

2. The applicant seeks orders that the rent deposited in court by the tenants over the suit land PLOT NO. MERU MUNICIPALITY/BOCK 11/97 pursuant to the court order made on 10th November, 2004 be released to the 1st defendant M'IBIRI M'MBOGORI and the inhibition placed against the suit land PLOT NO. MERU MUNICIPALITY/BLOCK 11/97 be lifted. And that the order lifting the inhibition be served upon the District Land Registrar Meru Central District for compliance.

3. The grounds in support of the application are set out in the body of the application and in the supporting affidavit of the applicant. The applicant avers that he is sickly and of advanced age and he needs the money for his daily upkeep and medical expenses. He also averred that it would be fair and just that the application be allowed to enable him inter-alia access his money which had been withheld for a period of over 15 years.

4. The application was served but no response was filed by the respondents.

5. I have perused the record. The application which gave rise to the ruling of 10.11.2004 was dated and filed on 26.10.2004 where the following orders had been sought by the plaintiff;

i. "That in the 1st instance the court do dispense with service and certify this matter urgent.

ii. That the respondents, their servants and or agents or anybody claiming through them be restrained from selling, alienating and/or charging or whatsoever dispose or interfere with plot no. MERU MUNICIPALITY BLOCK NO. 11/97 until further orders of the court.

iii. That an order of inhibition be placed on same block 11/97 until suit is heard.

iv. That the rent payable by the tenants in the same plot block 11/97 be deposited in court until finalization of the suit.

v. The costs be provided for".

6. This is the extract of the entire ruling of 10.11.2004.

“That the application be and is hereby allowed as prayed. That the respondents, their servants and/or agents or anybody claiming through them be and are hereby restrained from selling, alienating and/or charging or whatsoever disposing or interfering with plot no. Meru Municipality Block No. 11/97 until further orders of the court. That an order of inhibition be and is hereby placed on same block 11/97 until suit is heard. That the rent payable by the tenants in the same plot Block 11/97 be deposited in court until finalization of the suit”.

7. From both the application of 26.10.2004 and the ruling thereof of 10.11.2004, one cannot discern as to what was to happen after the rent money was deposited in court. There is no specific order that in the final analysis, the 1st defendant is the one who was entitled to the rent in respect of plot no. Meru/Municipality/Block 11/97 which was referred as the 2nd suit property in the judgment.

8. In the affidavit of the plaintiff, in support of his application dated 26.10.2004, he had averred that “*defendants*” were receiving money from the tenants which would imply that 1st defendant is not the only one who was entitled to the rent alone. Even if plaintiff lost the case, still this court does not have sufficient material placed before it to show that the money should be released to 1st defendant.

9. However, the inhibition placed on the suit land municipality Block II/97 is hereby lifted as the order was only to last during the subsistence of the suit.

Final orders

10. The order of inhibition placed on land parcel no. **MERU MUNICIPALITY/BLOCK 11/97** is hereby discharged. The other prayers in the application dated 22.11.2019 are disallowed. No orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE