



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

SUCCESSION CAUSE NO. 515 OF 2012

IN THE MATTER OF THE ESTATE OF JEREMIAH NGIRI KIBATI Alias JEREMIAH NGIRI (DECEASED)

DOUGLAS KIRUNYU MWANGI MATHENGE.....1ST APPLICANT

KAHARERI BURI KARUGU.....2ND APPLICANT

JOSIAH KINYUA MUCHINA.....3RD APPLICANT

VERSUS

EFUREITHI IRIMA MUGO.....RESPONDENT

R U L I N G

A. Introduction

1. This ruling pertains to two pending applications dated 7th December 2015, and 9th July 2018.
2. The application dated 7/12/2015 seeks inhibition orders against registration of land parcel Nos. Mbeere/Kirima/733, Mbeere/ Mbita/2027–2032. The application dated 9/07/2018 seeks inhibition orders against the registration of land parcels Nos. Mbeere/Kirima/5179 –5196.
3. The respondent only filed his replying affidavit to the application dated 7/12/2015 in which he stated that he was the only child of the deceased and had filed the proceedings for grant in line with the law.
4. The parties agreed to file submissions to dispose of the applications. Mr. Ithiga for the respondents opted not to file any submissions in this application.

B. Applicants' Submission

5. The applicants submit that pending the application for revocation of grant dated 28th July 2015 and in order to preserve the deceased's estate, the respondent should be restrained from any dealings with the suit land Mbeere/Mbita/2027 – 2032 and Mbeere/Kirima/5179 – 5196. The applicants further submit that parcel No. Mbeere/Kirima 733 was subject of litigation in Embu ELC JR No. 32 of 2015.
6. The 1st applicant further submitted that the certificate of grant obtained by the respondent on the 29/05/2014 was obtained fraudulently as there was concealment of material facts from the court specifically that there existed an earlier Succession Cause No. 213 of 2013 filed in Embu that had not been completed.

C. Analysis & Determination

7. I have considered the two applications that are the subject of this ruling.
8. Section 68(1) of the Land Registration Act provide: -

“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.”

9. 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 provision was designed to preserve property from acts that would otherwise render a court order incapable of being executed to preserve the suit property from being wasted pending hearing and determination of a suit.

10. 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.”

11. 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. I do note that the grant issued to the respondent is being challenged vide the summons for revocation dated 28/07/2015. Further to this, there is on record a copy of orders of stay issued on the 17/12/2015 and a consent order recorded on 12/10/2016 all staying execution of the grant issued to the respondent on the 29/05/2014.

12. The application for revocation of grant dated 28/07/2015 is grounded on the allegation that the grant issued to the respondent was obtained fraudulently. This in my opinion is a weighty issue and it is my view that failure to grant the orders of inhibition sought in the applications herein will render the summons for revocation futile. It is my opinion that the applications seeking orders of inhibition and *status quo* to be maintained should be allowed pending hearing and determination of the summons for revocation of grant.

13. I find that the applications dated 7/12/2015 and 9/07/2018 have merit and allow the applications as follows: -

a) An order of inhibition issues against any registration or interference in land parcel Nos. Mbeere/Kirima/733, Mbeere/Mbita/2027 – 2032 and Mbeere/Kirima/5179 – 5196.

14. Each party to meet their own costs.

15. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 16TH DAY OF OCTOBER, 2019.

F. MUCHEMI

JUDGE

In the presence of: -

Ms. Muriuki for Petitioner/Respondent

Mr. Ombachi for Applicants (for application dated 23/05/2016)

Mr. Okwaro for Mogusu for Applicants (for application dated 7/12/2015)