



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO 126 OF 2010

JULIUS MURITHI KIMATHIPLAINTIFF

VERSUS

ZIPPORAH KITHARA MUKIRI.....DEFENDANT

R U L I N G

This application is dated 14th October, 2016 and seeks orders:-

1. *That this Honourable Court be pleased to certify this application as urgent and the same be heard exparte.*
2. *That this Honourable Court be pleased to issue and register an order of Temporary Inhibition against Land Reg. No. NTIMA/IGOKI/2429 pending the hearing and determination of this suit.*
3. *That this Honourable Court be pleased to issue an order of temporarily injunction restraining the defendant by herself, her agents or assignees from evicting the Plaintiff from land Registration NO. NTIMA/IGOKI/2429 and or interfering with her quiet possession of the suit land until this suit is heard and determined.*
4. *That costs of this application be provided for.*

The application is supported by the Affidavit of JULIUS MURITHI KIMATHI and has the following grounds:-

- a) *The Respondent /Defendant has threatened to sell and transfer to third parties the Suit land and thus render the Plaintiff/Applicant and his family destitute despite being born and raised on the suit land.*
- b) *The Defendant/Respondent has since clandestinely removed the caution over the subject land lodged by the Plaintiff and is in the process of transferring the land to third parties.*
- c) *That the Plaintiffs interests and massive development on the suit land will be prejudiced if the intended sale and alienation takes place.*

The parties have canvassed this application by way of Written Submissions. Many of the issues raised herein can only be determined after the main suit has been heard . I note that this suit has remained unheard for close to 6 years.

I do not wish to reinvent the wheel. The Court of Appeal in the case of Mbuthia Versus Jimba Credit Corporation [1988] KLR 1 has eruditely given directions regarding how Injunctive Interlocutory applications should be handled. It opined as follows:

“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issue of fact, but rather to weigh up the relevant strength of each side’s propositions. The lower court judge had gone beyond his proper duties and made final findings of fact on disputed affidavits.”

I do not wish to decide on matters that can not be determined at this Interlocutory Stage. I opine that the weight of the parties diametrically opposed assertions falls in favour of declining to issue Injunctive Orders.

It is ordered as follows:-

1. ***Prayer 3 for Injunctive Orders is denied.***
2. ***In the Interest Justice, prayer 2 for Inhibition is allowed.***
3. ***The Plaintiff is ordered to fully comply with Order 11, CPR , within 30 days.***
4. ***The Defendant is ordered to comply with Order 11, CPR, within 30 days after receipt of the Plaintiffs compliance documents and if the Plaintiff will not have complied within the stipulated time, the Defendant should nevertheless comply after the time stipulated for the Plaintiff to comply has elapsed.***
5. ***The Plaintiff is ordered to set down this case for hearing within 90 days, and in default, the Defendant may do so.***

It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 11TH DAY OF MAY, 2016 IN THE PRESENCE OF:-

Cc: Daniel /Lilian

Wamache h/b Kaimenyi for the Plaintiffs

Mutura h/b Kioga for the Defendant

P.M. NJOROGE

JUDGE