



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ELC 23 OF 2015 (OS)

RICHARD GITARI BAIRI ALIAS PETER GITARI BAIRI.....PLAINTIFF

VERSUS

SEBASTIAN MAJAU M'MUGAMBI.....DEFENDANT

R U L I N G

This ruling under certificate of urgency is dated 20.4.2015. Interim orders in terms of prayers 2 and 4 were granted on 21.4.2015.

The application sought the following orders:

1. ***THAT this application be certified as urgent and the same be heard exparte on the first instance.***
2. ***THAT this Honourable Court be pleased to issue orders of inhibition and the same be registered over title No. L.R. NO. IGOJI/MWERU 1/267 pending the inter parties hearing of this application.***
3. ***THAT this Honourable Court be pleased to issue orders of inhibition and the same be registered over title No. L. R. NO. IGOJI/MWERU 1/267 pending the hearing and determination of this suit.***
4. ***THAT this Honourable Court be pleased to issue temporary orders of injunction to restrain the defendant, his agents, servants or any other person acting under his names and instructions from entering, trespassing or in any other way interfering with the plaintiff's occupation of a portion of land measuring 12 points of an Acre (0.05 Ha) being part of L. R. NO. IGOJI/MWERU 1/267 pending the interparties hearing of this application.***
5. ***THAT this Honourable Court be pleased to issue orders of injunction to restrain the defendant, his agents, servants or any other person acting under his names and instructions from entering, trespassing or in any other way interfering with the plaintiffs occupation of a portion of land measuring 12 points of an Acre (0.05 Ha) being part L. R. NO. IGOJI/MWERU 1/267 Until this case is heard and determined.***
6. ***THAT the costs of this application be met by the defendant/respondent***

It is supported by the affidavit of Richard Gitari Bairi and the following grounds:

- a) ***The applicant is the owner of a portion of land measuring 12 points of an Acre (0.05 Ha) having bought the same from the defendant.***
- b) ***The plaintiff is in occupation of a portion of land measuring 12 points of an Acre (0.5 Ha) being part of L.R. NO. IGOJI/MWERU 1/267 having bought the same from the defendant in 1990 and the defendant does not utilize or cultivate any part of the said land.***

c) The plaintiff has extensively developed the suit land and have acquired the same by adverse possession having bought the same from the defendant at the sum of Kshs.15,000/=.

d) The defendant is seeking to evict the plaintiff from the suit land.

e)The defendant is refusing to transfer the land officially to the plaintiff inspite of the consent form the Land Control Board having been obtained

f) The plaintiff has a good prima facie against the defendant and no prejudice will be occasioned to the defendant if the orders are issued.

g) The plaintiff's properties being a foundation for stone building and timber are in danger of being wasted and the entire suit will be rendered nugatory if he is evicted from the land.

h) It is only fair and just that the orders sought herein be granted to preserve the suit land until the case is heard and determined.

There is an affidavit of service. The application is not opposed. It is deemed to have been heard interpartes today as the defendant absented himself from court.

The application is allowed with the consequence that prayers 3 and 5 are confirmed. Costs shall be in the cause.

Delivered in Open Court at Meru this 6th day of May 2015 in the presence of:

CC Lilian/Daniel

Kiogora for Plaintiff/Applicant

P. M. NJOROGE

JUDGE