



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 6 OF 2008

IN THE MATTER OF LAND PARCEL NOS. NJIA/CIA-MWENDWA/3088
NIA/CIA-MWENDWA/3089 AND NJIA-MWENDA/1545

GEOFFREY MBAABU.....1ST APPLICANT

SOLOMON M'ETAYA.....2ND APPLICANT

VERSUS

M'MAINGI M'LAARU.....1ST RESPONDENT

JACOB MIORO M'LAARU.....2ND RESPONDENT

PATRICK KIBARI BARIU.....3RD RESPONDENT

JACOB MUCIKU M 'IMUNYA.....4TH RESPONDENT

R U L I N G

This application is dated 17th September, 2013 and seeks orders:

- 1. THAT this application be certified urgent and heard ex-parte in the 1st instance.**
- 2. THAT pending interparties hearing of this application an order of temporary inhibition be issued inhibiting land parcels Reg. No's NJIA/CIAMWENDWA/640, 587, 3088, 3089 and 1545.**
- 3. THAT the Honourable court be pleased to grant the applicants leave to amend the originating summons and include Patrick Kiburi Bariu and Jacob Muciku M'Imunya who are the registered owners of Land Reg No's NJIA/CIA MWENDWA/640 AND 587 as the 3rd and 4th Respondents.**
- 4. THAT the amended Originating Summons be deemed as properly filed upon the payment of the required court filing fees.**
- 5. THAT pending interparties hearing of this application an order of temporary injunction be issued against the 1st and 2nd Respondents and Patrick Kiburi Bariu and Jacob Muchiku M'Imunya restraining them or their agents, servants, assigns, successors in title, family members or anybody else acting at their behest or instance from transferring (sic) with the 1st and 2nd applicants peaceful occupation and utilization of the land parcels reg. No's NJIA/CIA-MWENDWA/640, 587, 3088, 3089 AND 1545.**

6. THAT Upon granting prayer 5 above it be served upon O.C.S. Maua Police Station to ensure compliance.

7. THAT Costs of this application be provided for.

It is supported by the affidavits of **GEOFFREY MBAABU**, the 1st applicant and **SOLOMON M'ETAYA**, the 2nd Applicant.

It has the following grounds:

1. THAT the applicants have been in exclusive, open and uninterrupted occupation of land parcels Reg. No's NJIA CIA-MWENDWA/640, 587, 3088, and 1545 for over 40 years.

2. THAT however the land parcels are registered in the names of the 1st and 2nd respondents, Patrick Kiburi and Imunya Imbeere whose legal representative is his son Jacob Muciku M'imunya.

3. THAT pleadings are already closed.

4. THAT land parcels numbers NJIA/CIA-MWENDWA/640 AND 587 are registered in the names of Patrick Kiburi Bariu and Imunya Ibeere who is deceased but Jacob Muciku M'Imunya his son and legal representative(sic).

5. THAT the parcels are subdivisions of the Original land reg. No. NJIA/CIA-MWENDWA/700 which the applicants are claiming.

6. THAT these sub-divisions had been omitted when the original summons was filed in court.

7. THAT the applicants have made substantial developments on the suit land to wit, built houses, planted miraa plants, planted trees and where they do substantial farming since their birth over 40 years ago, generally developed the parcels by putting piped water, rearing livestock and buried their father.

I do note that prayer No 5 in the application had been directed at Patrick Kiburi Bariu and Jacob Muchuku M'Imunya who were at the time the application was filed not parties to the suit.

On 4.5.2015, Mr. Njoroge holding brief for Kibe Mungai for the 1st and 2nd respondents told the court that they were not opposed to the granting of an order of temporary inhibition to inhibit Land Parcel Nos. Njia/Cia-Mwendwa/640, 587, 3088, 3089 and 1545.

I have carefully considered the submissions and the pleadings proffered by the various parties.

The 3rd and 4th respondents have submitted that they are living on their parcels of land and should, therefore, not be restrained from accessing their land as that would amount to evicting them. They also argue as the OS suit was originally directed at the 1st and 2nd Respondents, the plaintiffs if they have any valid claim over the 3rd and 4th Respondents land, their only option was for them to file a fresh suit instead of joining them to an old OS Suit.

I find that these arguments have merit. I, therefore, dismiss prayers 3 and 5 in the plaint. The consequence is that I decline to allow Patrick Kiburi Bariu and Jacob Muciku to be enjoined in the suit. I also dismiss the prayer for temporary injunction against all the respondents.

Regarding the order of inhibition against Land Parcel Nos. NJIA/CIA-MWENDWA/640, 587, 3088, 3089 and 1545, I find that the prayer is merited so that the Original Suit land can be preserved. I do realize that this may spawn inimical consequences in as far as the 3rd and 4th respondents are concerned. I do find that the interests of justice override such temporary consequences.

In the circumstances, I grant the following orders:

- 1. Orders of inhibition are to be registered against Parcel Nos NJIA/CUA-MWENDWA/640, 587, 3088, 3089 AND 1545 Pending the hearing and determination of this suit.**
- 2. The prayer for enjoining Patrick Kiburi Bariu and Jacob Muciku M'Imunya is declined and, therefore, is dismissed.**
- 3. The Prayer for temporary injunction directed at all the respondents and those tabulated in prayer 5 of the application is dismissed with the consequence that there will be no order to be served upon the O.C.S Maua Police Station to ensure compliance.**
- 4. I award no costs to any of the parties in this application.**

It is so ordered.

Delivered in Open Court at Meru this 7th day of July, 2015 in the presence of:

Cc. Daniel/Lilian

Parties not present

P. M. NJOROGE

JUDGE