



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ELC NO 99 OF 2015

ARAFAT ABDUL LATIF.....PLAINTIFF

VERSUS

ABDUL AZIZ JUMA1ST DEFENDANT

JUMA ABDUL AZIZ JUMA2ND DEFENDANT

ASHA ABDU AZIZ3RD DEFENDANT

HAFIS ABDUL AZIZ JUMA.....4TH DEFENDANT

INTERIM RULING

This application is dated 22/10/15 and seeks orders that:-

- 1. This application be certified as urgent and the same be directed to proceed to hearing immediately.***
- 2. This Honourable Court be pleased to order that the Defendants/ Respondent , their servants and/or agents or otherwise howsoever be restrained from dealing in any way whatsoever with MERU MUNICIPALITY BLOCK 11/67 pending the hearing and determination of this application.***
- 3. This Honourable Court be pleased to order that the Defendants/Respondents, their servants and /or agents or otherwise howsoever be restrained from dealing in any way whatsoever with MERU MUNICIPALITY BLOCK 11/67 pending the hearing and determination of this suit.***
- 4. This Honourable Court be pleased to order that the Defendants deposit the proceeds of rent from the whole of MERU MUNICIPALITY BLOCK 11/67 into this Honourable Court pending hearing and determination of this application.***
- 5. This Honourable Court be pleased to order that the Defendants/ Respondents deposit the proceeds of rent from the whole of MERU MUNICIPALITY BLOCK 11/67 into this Honourable Court pending hearing and determination of this suit.***
- 6. This Honourable Court do issue an order restraining the Defendants/Respondents from interfering, harassing and/or threatening the Plaintiff/Applicant from quiet and peaceful***

enjoyment of the property especially with regard to the Plaintiff/Applicant's shop situated at the MERU MUNICIPALITY BLOCK 11/67 pending hearing and determination of this suit.

7. This Honourable Court be pleased to order that the Registrar at the Lands Office do furnish the plaintiff/Applicant with the transfer documents relating to the entry of the 2nd, 3rd and 4th Defendants/ Respondents as proprietors into the title of MERU MUNICIPALITY BLOCK 11/67.

8. This Honourable Court be pleased to order that the Defendants/ Respondents provide the accounts relating to the proceeds of rent from MERU MUNICIPALITY BLOCK 11/67 commencing from 1st November, 2013.

9. The costs of this application be provided for.

It is supported by the affidavit of ARAFAT ABDUL LATIF and has the following grounds:-

1. The Plaintiff/Applicant is the legal Personal Representative of the Estate of the late ABDUL LATIF JUMA vide Grant of Letters of Administration Intestate issued on 10th June, 2014 in MERU HIGH COURT SUCCESSION CAUSE NO 111 OF 2014.

2. That pursuant to the Death of the said ABDUL LATIF JUMA, the Plaintiff obtained Grant of Letters of Administration vide MERU HIGH COURT SUCCESSION CAUSE NO 111 OF 2014 and was made the legal representative of the estate of ABDUL LATIF JUMA (Deceased) and MERU MUNICIPALITY BLOCK 11/67 falls under the said Estate.

3. The 1st Defendant and ABDUL LATIF JUMA (Deceased) were registered as Tenants in Common with 50% share each on MERU MUNICIPALITY BLOCK 11/67 sometimes in the year 1996.

4. The 1st Defendant approached the Deceased sometimes in the year 2010 with a proposal to have his children, the 2nd, 3rd and 4th Defendants/ Respondents herein registered as joint owners on the 1st Defendant's 50% share of MERU MUNICIPALITY BLOCK 11/67 and the deceased agreed.

5. The Defendants/Respondents illegally and fraudulently caused their names to be registered as joint owners in the title of the whole instead of the 50% share belonging to the 1st Defendant of all that parcel of land Known as MERU MUNICIPALITY BLOCK 11/67 initially owned by the ABDUL LATIF JUMA (Deceased) and the 1st Defendant as Tenants in common.

6. The Plaintiff has severally visited the Lands Office Registry in Meru County to try and peruse the Property file for MERU MUNICIPALITY BLOCK 11/67 to establish the contents of the transactions leading to the entry of the 2nd, 3rd and 4th Defendants/Respondents in the Title but has been informed that the transfer documents were not in the file.

7. The Defendants/Respondents have commenced construction activities on the property without regard for the 50% share that rightfully belongs to the Plaintiff/Applicant and the Plaintiff stands to suffer irreparable damages due to the construction.

8. The Defendants/Respondents have sought to dispossess and/or disinherit the Plaintiff off the share owned by the Deceased by producing the Title to MERU MUNICIPALITY BLOCK 11/67 with entries of their names together with the Deceased as joint tenants whereas the Plaintiff believes that his father, the Deceased did not transfer his 50% share to joint tenancy with the Defendants/Respondents.

9. That the Plaintiff lodged a caution against MERU MUNICIPALITY BLOCK 11/67 at the Lands Registry in Meru County but the Defendants/Respondents have moved to have it removed by the Registrar.

10. That Defendants/Respondents have issued notice to the Plaintiff to pay rent or vacate from a shop which he has been operating on the said property since the time the Deceased was alive and even after the Deceased's death.

11. The Defendants/Respondents have further issued notice to pay rent or vacate to the tenants that were paying rent to the Deceased before his death and have been receiving this rent forcefully from the said tenants since the death of the deceased hence denying the Plaintiff a source of livelihood and unjustly enriching themselves.

12. The Defendants/Respondent have never allowed the Plaintiff/Applicant access to the rent amount of Kshs. 103,000.00 which was payable to the Deceased before his death.

13. If the order sought pending determination of this application is not granted there is grave danger that the Plaintiff will be thrown out of his shop which is his only source of livelihood Deceased, his father supported him from using the rent. This will cause great harm and irreparable loss to the Plaintiff as the success of the Plaintiff in this suit will be rendered nugatory which cannot be compensated by costs.

On 3/10/2015, the parties consented to the grant of prayer 7 in the application. In the Circumstances, prayer 7 is granted. I also order as follows:-

1. In the Interests of Justice and in terms of Section 63, CPA, an order of Inhibition be registered against Plot No. MERU MUNICIPALITY BLOCK 11/67 pending the hearing and determination of this application.

2. Parties to appear before the DR for directions, by consent, On 3/12/2015.

It is so ordered.

Delivered in Open Court at Meru this 3rd day of November, 2015 in the presence of:

CC: Okaalo for Plaintiff/Applicant

Mutuma for Defendants.

P. M. NJOROGE

JUDGE