



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL SUIT NO. 42 OF 2014

MARGARET NTHIGA MURUNGI & 11 OTHERS.....PLAINTIFFS

VERSUS

MUSA M'MURUNGI NCEBERE.....1ST DEFENDANT

CHARITY NAITORE.....2ND DEFENDANT

R U L I N G

This application is dated 9th March, 2014 and seeks orders that:

(a) The Hon. Court do certify this application as extremely urgent and the same be heard ex-parte in the 1st instance, service of the same to be dispersed with in the 1st instance.

(b) The Hon. Court do issue an order for inhibition restraining any dealings whatsoever with land parcels NO.ABOTHUGUCHI/KATHERI/3148 now sub-divided into ABOTHUGUCHI / KATHERI 4360, and ABOTHUGUCHI/KATHERI/4361 and ABOTHUGUCHI/KATHERI/250, PLOT NO. 307 KULA MAWE ISIOLO TOWN, MERU MUNICIPALITY BLOCK I 1/36 until the suit is determined or until this application is heard and determined or until further orders of this court.

(c) The Hon. Court do make such further orders as may meet the ends of justice.

(d) Costs be borne by the respondent

The only ground supporting the application is that the respondents are in the process of transferring the suit land.

Prayers 1 and 2 were granted at the exparte hearing stage.

The plaint in this suit seeks judgment to declare that the suit lands are held in trust by the 1st defendant and that the intended transfer to the 2nd defendant is null and void *ab initio*. It also seeks an injunctive order restraining the defendants from interfering with the plaintiff's beneficial interests in the suit lands.

The plaintiffs state that the 1st defendant seeks to transfer some of the suit lands, which they claim are ancestral lands to the 2nd defendant. The 1st plaintiff is the wife of the 1st defendant. The other plaintiff's are apparently his children. The 2nd defendant is also his child. The 1st defendant had more than one wife. The plaintiffs through an order of inhibition seek to protect the suit lands pending hearing and determination of this suit.

The 1st defendant argues that the suit lands are not ancestral land and claims that he purchased them. He claims in his replying affidavit that after the demise of his 1st wife, the 1st plaintiff, the 2nd plaintiff and the 10th plaintiff engaged in an orgy of beating him as he was old, frail and sickly. They also denied him food necessitating him to move to Isiolo where the 2nd defendant, who now takes care of him works. He claims that the 1st plaintiff was opposed to the sub-division of Land Parcel No. Abothuguchi/Katheri/3148 into equal parts so that the 1st plaintiff took one portion for herself and her siblings and the 2nd defendant took the other portion in trust for other siblings who were not the children of the 1st plaintiff. He sensationally claimed that if he had continued to live with the 1st plaintiff she would, by now, have killed him. He claimed that the institution of this suit was meant to stress him to death as he was hypertensive and upon his death the 1st plaintiff would be left free to mistreat those of his children who are not her biological children.

Be it as it is may, this application should, like any other application be handled, judicially. This despite the palpable veritable pathos evoked by the 1st defendant's claims. I have considered the averments of the parties and their submissions. This application seeks orders which will preserve the suit lands pending hearing and determination of this suit. If the suit lands are disposed of before this suit is heard and determined, this suit would be rendered nugatory. I find that the assertions and counter assertions of the parties can only be fully ventilated during the hearing of the suit.

In the circumstances, I allow the application. Costs shall be in the cause.

It is so ordered.

Delivered in open court at Meru this 3rd day of July, 2014 in the presence of:

Ngunjiri h/b Miss E. G. Mwangi for Plaintiff/Applicant

Firm of Meenye & Kirima for defendants – Absent

P. M. NJOROGE

JUDGE