

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 99 of 2007

TERAH MUTETHIA MUGAMBI RESPONDENT/PLAINTIFF

VERSUS

JOHN MUTHOMI M'REWA APPLICANT/DEFENDANT

RULING

The plaintiff's suit seeks a declaration that L.R. No. KIIRU/NKANDO/343 measuring 28.20 acres lawfully belongs to him. The defendant by his defence filed in court on 5th October 2007, stated that following the death of M'Mbijiwe Muronga the suit property, through Succession Cause No. 44 of 1991, was distributed to the beneficiaries.

The defendant filed a Notice of Motion dated 1st September 2008 seeking order of inhibition to be issued and registered on the suit property pending determination of this suit. In the affidavit in support of that application, the defendant deponed that he has possession of 10 acres of the suit property as per the distribution effected through Succession Cause No. 44 of 1991. His ownership of that portion of 10 acres, according to him, is threatened by the adjudicating officer who has written a letter intimating that he would allow a change of ownership of that land.

The plaintiff opposed the application. It was argued on behalf of the plaintiff that the defendant's application cannot succeed because the defendant did not file a counter-claim, claiming ownership of the suit property. The plaintiff stated that the suit property belongs to him and is registered in his name.

I have considered both the arguments for and against the issue of orders of prohibition. I am of the view that it is imperative that the state of registration of the suit property be maintained until the determination of suit, which dispute essentially relates to ownership.

The order that commend itself is for *status quo* be maintained in respect of ownership of the suit property pending the determination of this suit.

I grant the following orders:-

(1) *That status quo be maintained in respect of ownership of L.R. NO. KIIRUA/NKANDO/343 pending the determination of this suit. This order to be registered against that title.*

(2) *That the costs of the Notice of Motion dated 1st September 2008 be in the cause.*

Dated at Meru this 9th day of July 2009.

MARY KASANGO

JUDGE