



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 100 OF 2017

STANLEY KINOTI MBURUGU.....PLAINTIFF

VERSUS

JANE GATABI CABARI.....DEFENDANT

RULING

1. By the Notice of Motion dated 24.7.2020, the applicant (Proposed Interested Party) seeks the following orders:
 - a. That there be a stay of execution of the consent judgment dated 27.9.2017.
 - b. That the said judgment and all consequential orders be set aside
 - c. That the applicant be enjoined in these proceedings and he be allowed to file the defence and counter-claim
 - d. That injunction orders be issued against both plaintiff and defendant in regard to suit parcels 1594, 1595 and 1596 pending the hearing and determination of the application and main suit and that orders of inhibition be issued in respect of aforementioned parcels of land.”
2. The applicant has filed a supporting affidavit where he contends that he is the legal representative of the estate of one MIRITI CHABARI (deceased) who was the owner of land parcel No. Nkuene/Nganyai/735.
3. He contends that this suit was fraudulently subdivided by the defendant herein into the three suit parcels Nkuene/Nganyai/1594, 1595 and 1596 which parcels are now registered in the name of Harun Muchoi Muriithi, Miriti Chabari and Stanley Kinoti Mburugu. He contends that defendant tried to evict him but neighbours came to his help. He also avers that no succession cause was filed in respect of the estate of deceased.
4. Both Defendant and Plaintiff were served. However, I only see the replying affidavit of the defendant. She contends that she was the registered owner of the suit-land and that she lawfully transferred the same to the plaintiff. She also consented that plaintiff is the one in possession of the suit land.
5. I have considered all the issues raised therein. I find that a consent Judgement was indeed entered into between the plaintiff and defendant on 27.9.2017 where by the defendant contented to being evicted from land parcel 1595’s road of access.
6. Such a consent can only be set aside on the ground of fraud or collusion or by an agreement contrary to the policy of the court – see **Ibrahim Tanga Nandeli V N.K. Bhatia & Brother [2016] eKLR.**
7. The Applicant has stated that no succession cause was filed in respect of the estate of Miriti Chabari who was the original owner of land parcel 735 (before its subdivision). He has availed a death certificate showing that Miriti died on 9.11.2012. Although the registration records availed by the applicant are not very visible, it appears that the subdivisions as well as the transfer of the resultant parcels occurred as from year 2013. The Defendant has not at all commented on these allegations.
9. It is therefore necessary to establish the circumstances under which defendant acquired the interest in the suit parcels to enable her pass on such interests to other parties like the plaintiff.
10. I note that the transfer of the land parcel 1595 had been effected long before the entry of the consent judgement. In the circumstances, it would not be practical to grant some of the orders sought like a stay of execution of the judgment. I also decline to grant the prayer of

injunction as the court doesn't know who is on the suit land.

11. All in all, I do find that to a large extent, the application is merited and the same is allowed in the following terms.

- a. The consent Judgement dated 27.9.2017 and all consequential orders are hereby set aside.**
- b. The applicant is hereby granted leave to file a defence and counter claim within 21 days.**
- c. The said defence and counter claim is to be served upon both the defendant and plaintiff as well as Harun Muchai Muriithi.**
- d. An order of inhibition is hereby issued in respect of parcels NKUENE/NGONYI/1594, 1595 and 1596.**
- e. The costs of this application shall be determined in the main suit.**

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF NOVEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 13.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE