



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 124 OF 2017**

**ANNA WANJIRA MUCHIRA.....PLAINTIFF/APPLICANT**

**VERSUS**

**MUOBE MURATIA.....1<sup>ST</sup> DEFENDANT**

**SAMSON MBUI OBADIAH KOIGI.....2<sup>ND</sup> DEFENDANT**

**EDWARD MURIITHI.....3<sup>RD</sup> DEFENDANT**

**BENSON MUGO KAGUURU.....4<sup>TH</sup> DEFENDANT**

**FELIDA WANGARI MUGO.....5<sup>TH</sup> DEFENDANT**

**MARION BEATRICE WANJIKU KARIUKI.....6<sup>TH</sup> DEFENDANT**

**AND**

**JACKSON MUNENE KABIGA.....INTERESTED PARTY**

**RULING**

The application before me is the Notice of Motion dated 19<sup>th</sup> October 2018 brought under **Order 1 Rule 10, Order 8 Rule 3 Civil Procedure Rules, Section 68 (1) of the Land Registration Act** and all enabling provisions of the law. The applicant is seeking the following orders:

**(1) Spent**

**(2) That an order of inhibition do issue against the titles of land parcel numbers KABARE/NJIKU/1703, 1704, 1705, 1707, 1708, 1709, 1710, 1711 and 1712 pending the hearing and determination of this application.**

**(3) That an order of inhibition do issue against the titles of land parcel numbers KABARE/NJIKU/1703, 1704, 1705, 1707, 1708, 1709, 1710, 1711 and 1712 pending the hearing and determination of this case.**

**(4) That Jackson Munene Kabiga be enjoined in this matter.**

**(5) That leave be granted to amend the plaint and the draft amended plaint be deemed as duly filed and served upon payment of the requisite Court fees.**

**(6) Costs of the application be provided for.**

The application is supported by the affidavit of the applicant sworn the same date. In her averments, the applicant deponed that the 1<sup>st</sup> respondent is her husband and that he is the registered proprietor of land parcel No. KABARE/NJUKU/220 in trust her, him and their children.

The applicant further stated that they sat as a family and agreed that each of their ten (10) children was to get a portion of the suit land parcel No. KABARE/NJUKU/220 after sub-division and that each was shown his/her own portion whereby some have even taken occupation and commenced development. The applicant also deponed that despite the family agreement, the 1<sup>st</sup> respondent only effected the transfer of one

parcel of land No. KABARE/NJUKU/1706 to one of their sons Paul Nguruka Muchira but failed to effect transfer to the other nine children but instead sold some portions without her knowledge and that of their children. After she learned of the sale of some of the portions, she placed a caution on the remaining portions of land before filing the instant suit. The applicant further stated that during the pendency of this case, the 1<sup>st</sup> respondent transferred another parcel No. KABARE/NJUKU/1711 to one Jackson Munene Kabiga. That application is opposed by Samson Mbui Obadiah Koigi (2<sup>nd</sup> respondent), Marion Beatrice Wanjiku Kariuki (6<sup>th</sup> respondent) and Jackson Munene Kabiga (interested party). In his opposition to the said application, the 2<sup>nd</sup> respondent filed a replying affidavit in which he deponed that he purchased portions of the suit land via a sale agreement dated 19<sup>th</sup> June 2017 being parcel numbers KABARE/NJUKU/1704 and KABARE/NJUKU/1707 at a consideration of 1,220,000/= all inclusive. The 2<sup>nd</sup> respondent further deponed that the vendor executed all the transfer documents and the two parcels of land were registered in his name. He attached a certificate of search marked 4 (a) (b) and (c).

The 6<sup>th</sup> defendant appointed Magee Wa Magee & Co. Advocate who filed grounds of opposition stating that the applicant's application is incompetent, lacks merit and bad in law. The 1<sup>st</sup> respondent who is acting in person gave viva voce evidence and stated that he had no objection to the grant of orders in terms of prayer (c) of the application. The interested party who is represented by Munene Kariuki Advocate expressed his desire not to oppose the said application.

I have considered with anxious care the said application and the submissions by the parties and/or their counsels. The applicant who is the wife of the 1<sup>st</sup> respondent is seeking an order of inhibition against parcels of land being numbers KABARE/NJUKU/1703, 1704, 1705, 1707, 1708, 1709, 1710, 1711 and 1712.

Before an order of inhibition is granted, the Court must be satisfied that similar grounds for the grant of injunction have been set out. An applicant must establish a prima facie case with high chances of success at the main hearing. The applicant must also demonstrate to the satisfaction of the Court that he will suffer injury for which damages will not be an adequate remedy. In the instant case, the applicant has merely stated that the 1<sup>st</sup> respondent has started selling family property without the spousal consent. **Section 25 (1) of the Land Registration Act 2011** provides as follows:

***“25 (1) The rights of a proprietor whether acquired on first registration or subsequently for valuable consideration or by an order of Court shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –***

***(a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register.***

***(b) to such liabilities, rights and interests as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.***

***(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee”.***

It was previously a requirement that no transfer of land could be effected without spousal consent but not anymore. The applicant has not demonstrated either from the affidavit evidence or the submissions that there is an overriding interest over the suit property between her, their children and the 1<sup>st</sup> respondent. In that case, there is no prima facie evidence that the applicant shall succeed in her claim at the main hearing. There is also no demonstration of any injury that the applicant is likely to suffer which cannot be compensated by damages should the orders sought not be granted. Deciding this matter on a balance of convenience, I am of the strong persuasion that the scales of justice tilt against the applicant. As regards to prayer No. 4 of the application, the applicant is granted leave to enjoin Jackson Munene Kabiga or any party necessary for the necessary of the determination of the real issues in controversy. The plaintiff is also granted leave to amend the plaint as requested under prayer No. 5 thereof.

In the final analysis, the Notice of Motion dated 19<sup>th</sup> October 2018 is disallowed under prayer No. (2) but allowed under prayer No. (4) and (5).

The costs of the application shall be costs in the cause. It is so ordered.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 24<sup>th</sup> day of January, 2019.

**E.C. CHERONO**

**ELC JUDGE**

**24<sup>TH</sup> JANUARY, 2019**

*In the presence of:*

1. Ms Waweru holding brief for Mr. Munene Muriuki for the Interested party.
2. Mr. Maina Kagio for the Plaintiff
3. Samson Mbui Obandia Koigi – 2<sup>nd</sup> Defendant

MR. KAGIO

I wish to make an oral application to amend the plaint to include the children of the plaintiff. I also wish to pray for an order of inhibition to issue against the titles of land parcels number Kabare/Njiku/1703, 1704, 1705, 1707, 1708, 1709, 1710, 1711, and 1712 pending the hearing of this case. Unless those orders are issued, the hearing and determination of this case might be rendered nugatory as the 1<sup>st</sup> defendant who is present in Court is likely to dispose the remaining portions of land. The other parties will not be prejudiced.

Court to the 1<sup>st</sup> Defendant

Have you sold land to the 2<sup>nd</sup> - 6<sup>th</sup> defendants ?

1<sup>st</sup> Defendant answer

No, I do not even know them.

COURT

In view of the response by the 1<sup>st</sup> defendant, I find it necessary to issue an order of inhibition against the titles of land parcels numbers Kabare/Njiku/1703, 1704, 1705, 1707, 1708, 1709, 1710, 1711 and 1712 pending the hearing and determination of this suit. I also grant temporary injunction order restraining the defendants and any other persons claiming under them from transferring, charging or any other dealings adverse to the plaintiff's interest in the suit land pending the hearing and determination of this suit.

**E.C. CHERONO**

**ELC JUDGE**

**24<sup>TH</sup> JANUARY, 2019**