



**REPUBLIC OF KENYA**

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

**MISC APPLICATION 26 OF 2018**

**DANIEL M'MUTUNGI M'MBURUGU.....PLAINTIFF**

**VERSUS**

**MOSES MBURUGU M'MBURUGU.....DEFENDANT**

**RULING**

1. By notice of motion dated 28.9.2018, applicant is seeking the following orders:

- (i) That the court be pleased to issue an order of inhibition , inhibiting any dealings in land parcel No.NYAKI/CHUGU/385 pending hearing and determination of this application inter-partes.
- (ii) That the court be pleased to issue an order of stay, staying proceedings in Meru CMCC ELC No. 70 of 2018 pending hearing and determination of this application inter-partes.
- (iii) That this court be pleased to grant leave and/or extend time to the applicant to execute the tribunal award dated 6.7.1999 out of time.

2. The grounds in support of the application are:

- (a) That the applicant was awarded a portion measuring half (1/2) an acre in L.R No Nyaki/Chugu/385 by the Meru Central Land Disputes Tribunal via an award dated 6.7.1999.
- (b) That the land tribunal award was reached via land Dispute case no. 40 of 1999 on 6.7.1999.
- (c) That the said award was read and adopted in open court on the 10<sup>th</sup> day of July 2002 vide Meru Chief Magistrate court L.D.T No. 40 of 1999.
- (d) That a decree dated 7<sup>th</sup> March 2003 was issued confirming the said award, to enable the respondent abide by the court orders conferring half (1/2) an acre to the applicant herein.
- (e) That the respondent preferred an appeal at the Provincial land disputes tribunal against the said award and the said appeal was dismissed on the 5<sup>th</sup> day of April 2002.
- (f) That after the said appeal was withdrawn, the respondent herein sought and obtained land control board consent to subdivide the subject matter and caused the applicant to pay the requisite fees for the whole process an amount which the applicant paid and a mutation detailing the sub-division was drawn but the respondent has refused to transfer to the applicant his share of half (1/2) an acre from the main land.
- (g) That prior to the subject matter being registered in the respondent's names, the respondent had fraudulently and secretly caused the same to be registered in his names to the exclusion of the other family members despite the same being ancestral and family land.
- (h) That the applicant and his family members have been living and have been in actual occupation of the half (1/2) an acre portion in L.R no. Nyaki/Chugu/385 where he has developed extensively and still continues to occupy the same to date.
- (i) That the respondent has now embarked on evicting the applicant and his family from the subject matter and is scouting for buyers with an aim of disposing off the half (1/2) acre currently occupied by the applicant and his family and on which portion the applicant

has built his home and has developed the same extensively.

3. The applicant has also filed a supporting affidavit where he reiterates the contents of the grounds in support of the application.

4. I have seen the Land Disputes Tribunal award in Land Disputes Tribunal no. 4 of 1999 as well as the court order of 10.7.2002 in L.D.T NO. 40 of 1999. I have no reason to doubt these documents.

5. I am however at a loss as to what is before the chief Magistrate in CMCC ELC 70/2018. It was incumbent upon the applicant to give full disclosure of what is pending before the lower court. In absence of such particulars, the court allows the application in terms of prayer 2, 3 and 4 of the application whereby **such orders will only remain in force for a period of 4 months only**. Thereafter, this miscellaneous file is to be marked as closed.

6. Costs in the cause.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 7<sup>TH</sup> JANUARY, 2019 IN THE PRESENCE OF:-**

**C/A: Kananu**

**Munene for applicant**

**Applicant**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**