



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND ACT AT MURANGA**

**ELC MISC NO. 11 OF 2017**

**GRACE WAMBUI NJAMBUYA.....PLAINTIFF**

**VS**

**JOHN WAWERU WAMAL.....RESPONDENT**

**RULING**

1. The Notice of Motion dated 10/8/16 under unspecified enabling provisions as filed by the Applicant herein seeks the following orders:-
  - a. Spent
  - b. That the honorable Court be pleased to order the Land Registrar, Murang'a to remove the prohibitory order placed on L.R. LOC.14/KAMUNE/199 (suit land) by the Respondent.
  - c. That the costs of the application be borne by the cause.
2. That application is based on the following grounds:
  - (a) That the Respondent has caused a prohibitory order to be placed on the suit land illegally.
  - (b) That I am the legal representative of the estate of Edward Njambuya Njiiri the registered owner of the suit land who is deceased having been so appointed vide Nairobi High Court Succession cause No. 1965 of 1999.
  - (c) That there is need for the said application to be heard as soon as possible.
3. The application is further supported by the affidavit of Grace Wambui Njambuya, the Applicant, who in addition to reiterating the grounds on the face of the application annexes copies of the confirmed grant in respect to the estate of Edward Njambuya Njiiri in her favour and a copy of official search indicating that a prohibitory order was registered on parcel No.Loc.14/Kamune/199 on 16/3/93 vide Misc.Civil Appeal No. 23 of 1993 High Court Nyeri. She avers that she is unable to transfer the land which is part of the estate of the deceased to herself as ordered by the Probate Court at Nairobi due to the prohibitory orders subsisting thereon. She seeks that the application be determined expediently to enable her complete the registration and transfer process.
4. The Respondent in opposition to the application filed grounds of opposition dated 29/3/17 as follows:-
  - (a) The application as filed is frivolous, vexatious and an abuse of the due process of the Court.
  - (b) The application as filed is fatally defective as the prayers sought in prayer (b) thereof can only be granted through a substantive suit by way of a plaint.
  - (c) A substantive prayer for removal of a prohibitory order on land parcel No. Loc.14/Kamune/199 cannot be granted by way of Notice of motion.
5. Counsels for the parties opted to canvas the application through written submissions.
6. The Applicant submitted that the parcel of land, the subject matter of this suit is part of the estate of Edward Njambuya Njiiri to which the Applicant was appointed the administrator vide Nairobi High Court succession cause No. 1965 of 1999. That upon her confirmation the Applicant was unable to transfer the subject land to herself as per the grant because a prohibitory order has been placed on the land by the Respondent. She avers that the Respondent has no stake and/or legal interest in the said land. That the Respondent has not sued the Applicant

claiming any legal right over the suit land neither has the Respondent revoked the succession proceedings in respect to the deceased's estate thus the land as of right belongs to the estate of Edward Njambuaya Njiiri and contends that the Respondent should concede to the application and have the prohibitory order lifted.

7. The Respondent submits that the substantive relief as sought by the Applicant cannot be granted through a Notice of Motion as prayed by the Applicant, without filing a substantive suit by way of a plaint, petition or originating summons. That a Notice of Motion is only filed where there is a substantive suit already on record particularly to seek interlocutory reliefs. The Respondent believes that the Applicant ought to have moved the succession Court that confirmed the grant in her favour for the reliefs sought herein. In the alternative that it's only the Court that issued the prohibitory orders that has powers to lift the same, that the application ought to have been filed in Nyeri High Court Misc. Application No. 23 of 1993.

8. I have read and considered the application the grounds relied by both parties and the submissions and the key question for determination is whether the application is merited.

9. The Court may order a prohibition or inhibition on such conditions as it thinks justifiable in the circumstances. It may be for a period of time or until the occurrence of a certain action. A prohibition may be cancelled after the expiry of the time for which it was ordered or at the proof of occurrence of the event stated in the prohibition.

10. I have perused the official search for the suit land dated 29/6/16 and the entry No 5 refers to the Prohibition order vide Misc Civil Application No 23 of 1993, High Court Nyeri. None of the parties have enclosed the orders stated for the Court to appreciate the nature of the prohibition, whether or not the prohibition is spent (whether the event that sought to be prohibited is still in force), the parties involved, what is being prohibited and for what duration.

11. I have perused the application and on the face of it I note that the application seeks orders against the Land Registrar Muranga. The said Land Registrar is not enjoined as a party in the application. The orders are directed to the Land Registrar to remove the prohibitory orders placed on the suit land. It is trite that the Court cannot act in vain. Similarly, its orders cannot be issued in vain. The Respondent has no powers to remove the said orders.

12. For the forgoing reasons, I order that the application is struck out with costs to the Respondent.

**Orders accordingly**

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 28<sup>TH</sup> DAY OF MARCH, 2019.**

**J G KEMEI**

**JUDGE**

**Delivered in open Court in the presence of:**

Ms Muthii HB for T M Njoroge for the Applicant

Kirubi for the Respondent

Njeri and Kuyiki, Court Assistant.