



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

MISC. APPL. NO. 17 OF 2018

MWANAMISI CHEMATU KIPRURES.....1ST APPLICANT

GLADYS NANJALA.....2ND APPLICANT

VERSUS

STEPHEN KIPKURES MASAI *alias*

STEPHEN ALAS MASAI.....RESPONDENT

R U L I N G

1. The application dated **10/12/2018** which was filed in court on **14/12/2018** seeks orders as follows:

(a)spent...

(b) **That pending the inter partes hearing of this application the status quo obtaining on the register for land parcel Trans-Nzoia/Cherangany/982 as at the time of this applicant (sic) be maintained**

(c) **That the honourable court be pleased to make an order of inhibition inhibiting the registration of any delays (sic) contractual or otherwise over land title No. Trans Nzoia/Cherangany/982 until the same be removed by this honourable court.**

2. The application is brought under **Section 68 the Land Registration Act No. 3 of 2012, Section 18 (c) of the Environment & Land Court Act and Section 3A of the Civil Procedure Act.**

3. The grounds upon which that application is made are at the foot thereof, namely that land title **No. Trans Nzoia/Cherangani/982** is matrimonial property having been jointly purchased by the 1st applicant and the respondent; that the respondent is purporting to dispose the said land without the applicant's consent and it is in the interest of justice that the orders sought be granted.

4. The sworn affidavit of the 1st applicant is annexed to the application. It states that she got married to the respondent under African custom in **1959**; that after independent they became squatters; that out of their savings they bought plot no. **222 Cherangani Scheme** measuring **135** acres which was registered in the respondent's name and on which land they settled in **1969** and commenced farming activities; that their marriage was blessed with **7 children** whose names are given on that affidavit with the oldest being **58** years and the youngest **42** years; that in **1976** the respondent tried to sell the entire land and upon the family complaint the Land Disputes Tribunal decided that the family should retain half of the land about **58** acres which were subsequently registered as **Trans Nzoia/Cherangani/530**; that later on the respondent subdivided the land into various portions and sold of some leaving the family with **Trans Nzoia/Cherangani/982** measuring about **48** acres which is now attempting to sell; that all the children of the marriage and their descendants as well as the 2nd applicant who got married to the respondent in **1999** have established home on the land.

5. The respondent is said to have married another wife who died leaving **2** children. The 2nd respondent is said to have **2** children and her sworn affidavit also annexed to the application confirms the contents of the first affidavit.

6. This court will examine the legal regime under which the application at hand has been brought in order to determine if it is seized of jurisdiction to hear and determine it.

7. **Section 68** of the **Land Registration Act** provides as follows:

“68. Power of the court to inhibit registered dealings

(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.

(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.”

8. Section 18(c) of the Environment and Land Court Act has the following provisions:

“18. Guiding principles

In exercise of its jurisdiction under this Act, the Court shall be guided by the following principles -

(a) the principles of sustainable development, including -

(i) the principle of public participation in the development of policies, plans and processes for the management of the environment and land;

(ii) the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and not inconsistent with any written law;

(iii) the principle of international co-operation in the management of environmental resources shared by two or more states;

(iv) the principles of intergenerational and intergenerational equity;

(v) the polluter-pays principle; and

(vi) the pre-cautionary principle;

(b) the principles of land policy under Article 60(1) of the Constitution;

(c) the principles of judicial authority under Article 159 of the Constitution;

(d) the national values and principles of governance under Article 10(2) of the Constitution; and

(e) the values and principles of public service under Article 232(1) of the Constitution.”

9. Section 3A of the Civil Procedure Act provides as follows:

“3A. Saving of inherent powers of court.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

10. Under the above provisions this court clearly is possessed of such jurisdiction to enable it issue an inhibition order in suitable conditions.

11. However, the instant application is a miscellaneous application. There is no suit commenced by any of the recognized legal means. I find that whether the applicants are deserving of the orders sought in the application or not, the want of a suit remains a great setback to their attempt to obtain inhibition orders.

12. Section 68 provides for powers of court to make an inhibition order inhibiting for *a particular time, or until the occurrence of a particular event, or generally until a further order*, the registration of any dealing with any land, lease or charge.

13. One wonders how the court would ever come to issue any other contrary or further orders subsequent to the finalization of the application which clearly consists of only one main prayer, perchance that prayer is granted.

14. There are authorities to the effect that one may not sustain such substantive and final prayers unless the application seeking them is filed within a suit within the manner prescribed by law contrary to **Order 3 Rule 1** of the **Civil Procedure Rules 2010**. **Order 3 Rule 1** of the **Civil Procedure Rules** provides that:-

“Every suit shall be instituted by presenting a plaint to the court or in such other manner as may be prescribed”.

15. In **Peter Kwema Kahoro -vs- Benson Maina Githethuki [2005] eKLR** the court stated as follows:-

“the only objection which has caused me anxiety is the one directed at the manner in which the applicants have originated these proceedings. Section 19 of the Civil Procedure Act provides as follows:-

“19. Every suit shall be instituted in such manner as may be prescribed by rules”.

And Order IV Rule 1 of the Civil Procedure Rules reads:-

“1. Every suit shall be instituted by presenting a plaint to the Court or in such other manner as may be prescribed”.

The Civil Procedure Rules provide other modes of instituting proceedings. These include matters that may be instituted by way of Originating Summons or Motions, Applications for Judicial Review and proceedings under Advocates Act.

In the light of the above, I am not persuaded that the Applicants were entitled to institute these proceedings by way of a Chamber Summons in a miscellaneous application. Being of this persuasion I find and hold that the application dated 2nd February, 2005 and filed on 4th February, 2005 is incompetent and it struck out with costs”.

16. In **Geoffrey Ndungu Theuri -vs- Law Society of Kenya 1998 eKLR** the court considered a suit as that which meets the definition in Section 2 of the **Civil Procedure Act** that is, “all civil proceeding commenced in any manner prescribed under the Civil Procedure Rules”. The court held that an applicant is not entitled under **Order 39** of the **Civil Procedure Rules** to seek or obtain an order for injunctive relief against another party without filing a suit and that not even an invocation of the provisions of the ubiquitous **section 3A** of the **Civil Procedure Act** could save such an application.

17. Though the application is not brought under **Order 39** but under **Section 68** of the **Land Registration Act**, I find no law in that Act or in the **Civil Procedure Rules** that exempts this kind of application from the general rule that it must be rooted in the fertile soil of a suit having a reasonable cause of action and filed in accordance with the rules.

18. Having said as above I find that the instant application is fatally defective for being filed independently of a suit and I hereby strike it out.

19. There shall be no orders as to costs.

Dated, signed and delivered at Kitale on this 11th day of March, 2019.

MWANGI NJOROGE

JUDGE

11/03/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Collins

Mr. Kipruto holding brief for Ngeywa for the applicant

N/A for the respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

11/03/2019