



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO 10 OF 2019

SARAPHINE MBAE RITHAA.....PLAINTIFF

VERSUS

FAUSTINO KANGORI M'NAIROBI.....DEFENDANT

RULING

1. This application is dated **13th May, 2019** and seeks orders:

- a. That this application be certified as urgent and that it be heard ex parte in the first instance.
- b. That an order of inhibition do issue restraining any dealings whatsoever with land parcel no. MUTHAMBI/KANGUNDU/445 pending the hearing and determination of this application.
- c. That an order of inhibition do issue restraining any dealings whatsoever with land parcel no. MUTHAMBI/KANGUNDU/445 pending the hearing and determination of the main suit or until further orders of this court
- d. The court do issue an order for temporary injunction restraining the defendant whether by himself, his servants, agents or any person whomsoever acting on his behalf from doing any of the following acts that is to say ejecting, selling, leasing, charging or otherwise interfering with the Plaintiff/Applicants quiet, peaceful, actual and exclusive possession, cultivation, use, development and enjoyment of the portion measuring one acre (1) out of land parcel no. MUTHAMBI/KANGUNDU/445 pending the hearing and determination of this suit.
- e. That the costs of this application be provided for.

2. The application has the following grounds:

- i) The Applicant has been in occupation of the suit land since 1998.
- ii) That the Respondent is threatening the Applicant with eviction from the suit land
- iii) That the Applicant is apprehensive that he will suffer irreparable damages if he is evicted from the suit land.
- iv) The land is also in danger of being alienated or disposed of by the Defendant since it is registered in his names.
- v) The Applicant has filed a suit claiming adverse possession of the suit land and the said suit has overwhelming chances of success.

3. The application is supported by the affidavit of SERAPHINE MBAE RITHAA sworn on **13th May, 2019** which states:

I, SARAPHINE MBAE RITHAA of PO BOX 39 MARIMA, THARAKA NITHI in the REPUBLIC OF KENYA make oath and state as follows:-

1. That I am the 1st applicant/plaintiff herein competent to swear this affidavit.
2. That land parcel number MUTHAMBI/KANGUNDU/445 measuring approximately 2.45Ha and is registered in the names of the

Respondent (Annexed hereto and marked as 'SMR '1' is a copy of the official search for the suit land.

3. That the said land was originally land parcel no. 445 KANGUNDU ADJUDICATION SECTION and subject of Objection no. 67 of 1995 (Annexed hereto and marked as 'SMR '2' is a copy of the said objection.
4. That the Objector was one M'NAIROBI KATHIRI who is the father of the Respondent herein was claiming a portion measuring one (1) acre out of the said land.
5. That the Objector M'NAIROBI KATHIRI claimed the one (1) acre because he had given his son the Respondent money to purchase the same and that during the gathering and registration of the land the whole land was registered in the names of the Respondent including the one (1) acre he had purchased for his father.
6. That later a dispute arose between the Respondent and his father leading to the father filing an objection before the Adjudication Committee (Annexed hereto and marked as SMR '3' is the said Objection Committee proceedings.)
7. That the Objection Committee ruled that one (1) acre out of land parcel no 445 should be registered in the names of the Objector M'NAIROBI KATHIRI.
8. That following that decision the District Land Adjudication Officer was directed to excise one (1) acre out of land parcel no. 445 and to allocate it a separate number.
9. That after survey was done a portion measuring one (1) acre was excised out of land parcel no. 445 and allocated the number 1475 KANDUNGU ADJUDICATION SECTION and the same was registered in the names of the Respondent's father.
10. That the land adjudication staff also placed beacons separating the main land from the portion that belonged to the Respondent's father.
11. That later the Respondent's father approached me with a request to purchase his one acre comprised of land parcel no. 1475 KANDUNGU ADJUDICATION SECTION.
12. That during the negotiations for the sale the respondent's father showed me the extent of his land while showing me the demarcation lines and fence separating the two parcels of land from each other.
13. That I carried out his due diligence and established that the land adjudication register indicated that the Respondent's father was the registered owner of the suit land.
14. That I also discussed with family members and the family members and elders consented to the Respondent's father selling the land to me (Annexed and marked as 'SMR '4' is a copy of the consent letter signed by various family members).
15. That the Respondent's father and I signed a sale of land agreement before an advocate and the transaction is well documented by the annexed copy of sale agreement marked as 'SMR '5').
16. That after signing the sale agreement I entered the suit land, took possession and began cultivating it while improving it by planting indigenous trees and building terraces to conserve the soil.
17. That over the years I have invested heavily on the land; improved the soil by laying terraces to control erosion and I have been cultivating seasonal food crops like maize and beans while taking care of the indigenous trees that I planted many years ago on it. I also cultivate napier grass for my cows on the land.(Annexed hereto and marked as 'SMR '6' is a set of photos showing the activities on the said land)
18. That at one time in 1998 the Respondent came and destroyed the crops that the Applicant had planted and I reported to the police upon which he was arrested and charged in Chuka Resident Magistrates Court criminal case no. 1591 of 1998 (annexed is 'SMR '7' a copy of a letter by OCS concerning the said case)
19. That in the year 2015 the Respondent filed a civil suit o. 5 of 2015 at Chuka Principal Magistrates Court seeking to have me evicted from the suit land but the suit got dismissed for want of prosecution.
20. That recently the Respondent has began to issue me with threats in which he is asking him to vacate the suit land while appearing belligerent and like he can erupt into violence any time.
21. That I fear that the Respondent is capable of carrying out his threats to evict him from the suit land before this suit is heard and determined unless he is stopped by this Honorable Court.
22. That I have been in control of the said portion measuring one (1) acre for many years and he has been using the proceeds from it to feed and take care of his family including wife and children.
23. That if I am evicted from the suit land I will suffer irreparable loss and damages including losing his source of livelihood and sustenance.

24. That I have always been under the impression that the land I bought from the Respondent's father is the one I have been occupying all these years.

25. That recently the Respondent told me to vacate his land and to go occupy my land wherever it is.

26. That due to this I visited the Lands Office in Chuka where I learnt that according to the map containing the position of land parcel no. MUTHAMBI/KANGUNDU/1475 is located very far from the portion I have been occupying. (Annexed and marked as 'SMR '8

27. ' is a copy of the title deed for this parcel)

28. That there is a real danger that the Respondent might dispose of the suit land before this application and suit is heard and determined and to my detriment.

29.. That it is necessary that an inhibition order be issued to preserve the suit land until the application and suit is heard and determined.

30. That the Respondent is also making threats insinuating that the he wants to take over the portion of land belonging to me.

31. That there is absolute need to preserve the status quo on the ground until this application and suit is heard and determined.

32. That the current status quo is that I am occupying one (1) acre out of the Respondent's land and he is occupying the rest of the land.

33. That there is a distinct boundary between the two lands.

34. That I am swearing this application to support my application for an order of inhibition against land parcel no. MUTHAMBI/KANGUNDU/445 as well as restraining orders to stop the Respondent from interfering with my peaceful and quiet occupation of the suit land until the final decision of this court.

35. That what is stated herein is true to the best of my knowledge, information and belief.

4. During exparte hearing M/S Kithaka said she was relying on the pleadings filed by the applicant. She asked the court to grant prayers b and d.

5. I note that prayer d as framed has a veneer of finality. It cannot be granted in this form.

6. I issue orders as follows:

a) Prayer b is granted.

b) Prayer d is granted STRICTLY pending hearing and determination of this application.

c) Application will be heard interpartes on 29.5.2019.

7. It is so ordered.

Delivered in open Court at Chuka this 15th day of May, 2019

in the presence of:

CA: Ndegwa

Miss Kithaka for the applicant

P.M. NJOROGE

JUDGE