



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 117 OF 2018

BILLY WAWERU KAMAU.....PLAINTIFF/APPLICANT

VERSUS

JOSEPH KAMAU MUNJURI...DEFENDANT/RESPONDENT

RULING

1. The application dated **24/12/2018** is brought under *Sections 1A,1B,3& 3A of the Civil Procedure Act and Section 68 of the Land Registration Act No, 3 of 2012* seeking the following orders:-

(1) That this Honourable court be pleased to issue an order of inhibition inhibiting any dealings on land parcel No. Kakamega/600, pending the hearing and determination of this application and pending hearing and determination of the main suit herein.

(2) That in the meantime there be an interim order in terms of prayer 2 herein above.

(3) That costs be in the cause

2. In response to that application, the defendant filed a replying affidavit sworn on **28/1/2019** in which he deponed inter alia that the applicant is outrightly guilty of concealment of very crucial material fact and for which reason the ex parte order granted on 9/1/2019 should be set aside.

3. It is further submitted that the defendant has been the registered owner of the land comprised in parcel No. **Kakamega/Mabusi/170 and 171** and that he sold some of that land at some point in order to educate his children. A copy of the mutation showing a purported subdivision of the land is annexed on the defendant's affidavit as "JKM1".

4. The defendant submits that he subdivided the Parcel No. **Kakamega/Mabusi/170** into **nine** and shared amongst his children and their mother. The defendant further states that he allocated the plaintiff **5 acres** of land where he lives and that all his siblings have been allocated land which they have acknowledged as full and final settlement of their inheritance. The defendant avers that the applicant has no reason to inhibit his land.

5. Upon considering the application, the rival affidavits and the submissions on record, it is apparent that the issue for determination in the present application is whether there is a basis for the court to grant the orders sought.

6. *Section 68 (1) of the Land Registration Act 2012* grants the Court power to inhibit dealings with registered land. It provides that:-

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

7. Ordinarily, an inhibition order is similar to an injunction as it seeks to preserve the suit property pending the hearing and determination of the suit. In considering whether or not to grant an order of inhibition several factors must be taken into account as follows:

(a) Whether the applicant has good grounds for the grant of such remedy.

(b) Whether the property in dispute is at risk of being alienated or transferred to the detriment of the applicant.

(c) Whether failure to grant the order would render the suit nugatory.

(d) What prejudice, if any, will be caused to the other party.

(e) The conduct of the parties.

8. Taking all the above into account, it is noted that the plaintiff's claim is based on the allegation that the Respondent has sold and transferred some of his properties to third parties and that the applicant is apprehensive that the Respondent may sell the suit land known as Parcel No. **Kakamega/ Mabusi/600** hence this application.

9. In his response the Respondent has admitted to selling some of his land comprising of Parcel No. **Kakamega/Mabusi/170** and 171 in order to educate his children as he is not in any formal employment. On the issue of the land being sought to be inhibited, that is Parcel No. **Kakamega/ Mabusi/600**, the respondent submits that the said land is where he lives and he cannot sell the same as it is his homestead.

10. I have noted that the defence of the respondent is that he is not intent on selling the suit land. The plaintiff states that on the suit land which is the family's remaining land the plaintiff is out to protect, his mother and his disabled sister live, and the defendant has no exclusive right to the same.

11. Though the respondent states that he does not wish to dispose of the suit land, he can not explain why he needs to have the caution registered over it by the plaintiff removed. It must be assumed that the Land Registrar is in giving notice of intention to remove the caution, acting at the instance of the respondent.

12. In my view, the removal of the caution may make the suit more prone to disposal by the respondent who has already sold other portions. There is danger of the suit property being placed in the hands of a third party and thus complicating this litigation further. This court has the jurisdiction to order a halt to the acts of a litigant which may have that kind of effect.

13. The balance of convenience in this matter lies in preserving the suit land until the final decision in this suit has been given.

14. I therefore find that in granting the application the suit property may be safeguarded. I therefore grant the application dated **24/11/2018** in terms of **prayer (1) and (3)**.

It is so ordered.

Dated, signed and delivered at Kitale on this 6th day of May, 2019.

MWANGI NJOROGE

JUDGE

6/5/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kiarie for defendant/respondent

Ms. Munialo for plaintiff/applicant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

6/5/2019