



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 268 OF 2017 (OS)

IN THE MATTER OF THE REGISTRATION OF LANDS ACT NO. 3 OF 2012 SECTION 28(H)

AND IN THE MATTER OF ORDER 37 RULE 7 CIVIL PROCEDURE RULES

AND IN THE MATTER OF SECTION 38 OF THE LIMITATIONS OF ACTIONS ACT CHAPTER 22 LAWS OF KENYA

AND IN THE MATTER OF AN APPLICATION BY ELIZAPHAN NTHIIRI RERI THAT THE COURT DO MAKE A

DECLARATION THAT HE IS ENTITLED TO 0.12 ACRES OUT OF THE ORIGINAL LR:

KARINGANI/MUGIRIRWA/365 OR ITS SUBDIVISIONS LR; KARINGANI/MUGIRIRWA/3677, 3678, 3679

AND IN THE MATTER OF AN APPLICATION BY ELIZAPHAN NTHIIRI RERI THAT HE BE REGISTERED WITH 0.12 ACRES OUT OF THE ORIGINAL LR; KARINGANI/MUGIRIRWA/365 OR ITS SUBDIVISION LR; KARINGANI/MUGIRIRWA/3677, 3678 AND 3679

ELIZAPHAN NTHIIRI RERI.....

.....PLAINTIFF

VERSUS

DYNAH KANGAI ALBERT (SUED AS AN ADMINISTRATRIX OF THE ESTATE OF ALBERT MURERA NGARUNI)..... 1ST DEFENDANT

FELIX KIRIMI MUCHEKE (SUED AS A BENEFICIARY OF THE ESTATE OF ALBERT MURERA NGARUMI).....2ND DEFENDANT

JOSELINE CIAUTEGI MUCHEKE (SUED AS A BENEFICIARY OF THE ESTATE OF ALBERT MURERA NGARUMI).....3RD DEFENDANT

ROSE CIRINDI ALBERT (SUED AS A BENEFICIARY OF THE ESTATE OF ALBERT MURERA NGARUMI).....4TH DEFENDANT

BESSU KANJIRU ALBERT (SUED AS A BENEFICIARY OF THE ESTATE OF ALBERT MURERA NGARUMI).....5TH DEFENDANT

LISPER KENDI MUCHEKE (SUED AS A BENEFICIARY OF THE ESTATE OF ALBERT MURERA

RULING

1. This application is dated 14th July, 2017 and seeks orders:

1. That for reasons set out in the certificate of urgency herewith annexed and filed the court be pleased to certify this application urgent and service of the same be dispensed with in the first instance and the court do issue prayer 2 on ex-parte and interim basis.

2. That pending the hearing and determination of this motion the court be pleased to issue an inhibition order against land parcels LR; KARINGANI/MUGIRIRWA/3677, LR; KARINGANI/MUGIRIRWA/3678 AND LR; KARINGANI/3679 inhibiting any subdivision, sale, lease or transfer.

3. That pending the hearing and determination of the main suit the court be pleased to issue an inhibition order against land parcels LR; KARINGANI/MUGIRIRWA/3677, LR; KARINGANI/MUGIRIRWA/3678 AND LR; KARINGANI/MUGIRIRWA/3679 inhibiting any subdivision, sale, lease or transfer.

4. Costs of this application be provided for.

2. The application is supported by the affidavit of BORNFACE GITARI KIRIMO and has the following grounds;

a) That the applicant through a written agreement purchased 0.12 acres out of the original LR; KARINGANI/MUGIRIRWA/365 which then registered under ALBERT MURERA NGARUMI (deceased).

b) That the deceased was to transfer 0.12 acres to the applicant on condition that the applicant paid the obtaining balance of Kshs.5,000 provided that the deceased prepared and executed transfer documents transferring the sale land to the applicant and the applicant confirming that such documents were in transferrable order.

c) That the suit land LR; KARINGANI/MUGIRIRWA/365 was charged by National Bank of Kenya Limited and a protracted dispute went on for a long time making it impossible for the deceased to execute transfer documents of 0.12 acres to the applicant.

d) That the deceased died on or around 8th December, 2013.

e) That upon the demise of the deceased the 1st respondent finalized the issues and/or encumbrances over LR; KARINGANI/MUGIRIRWA/365 and the land was discharged by the national bank of Kenya limited.

f) That when the suit land LR; KARINGANI/MUGIRIRWA/365 was free from any encumbrances the 1st respondent stealthily and secretly petitioned court for letters of administration in respect of her late father without informing the applicant despite THE applicant's lien and/or interest over the suit land.

g) That temporary grant was made to the 1st respondent on 19th November, 2014 and grant was confirmed on 11th February, 2015.

h) That the 1st respondent then proceeded to implement the certificate of confirmed grant by subdividing LR;KARINGANI/MUGIRIRWA/365 into LR; KARINGANI/MUGIRIRWA/3677, 3678 AND 3679 and completely disregarded the interests of the applicant.

i) That still stealthily and secretly the 1st respondent transferred LR; KARINGANI/MUGIRIRWA/3677 to DYNA KANGAI herself, LR; KARINGANI/MUGIRIRWA/3678 to 2nd respondent and LR; KARINGANI/MUGIRIRWA/3679 3rd, 4th and 6th respondents.

j) That the transfer of the resultant parcels from the subdivision of LR; KARINGANI/MUGIRIRWA/365 hold the said parcels in trust for themselves and 0.12 acres thereof for the applicant.

k) That the applicant has been living in the suit land since 1993 a period of 12 years uninterrupted hence the applicant has acquired ownership of 0.12 acres out of the original LR;KARINGANI/MUGIRIRWA/365 and /or its subdivisions LR; KARINGANI/MUGIRIRWA/3677, 3678 ND 3679 by operation of law.

l) That there is need for an inhibition order to be issued by the court against LR; KARINGANI/MUGIRIRWA/3677, 3678 AD 3679 for the sole purpose of preserving the suit land pending the hearing and determination of the suit.

m) That the orders sought are not prejudicial to any litigant in this case.

n) That the orders sought are the most apt, fair and just in the circumstances.

3. Mr I.C. Mugo represented the applicant.

4. I have carefully considered the issues raised in the application at this ex parte stage.

5. I grant prayer 2 for inhibition pending hearing and determination of this application.

6. Costs shall be in the cause.

7. The application will be heard inter partes on 24.7.2017.

8. It is so ordered.

Delivered in open court at Chuka this **17th day of July, 2017** in the presence of:

CA: Ndegwa

IC Mugo for the plaintiff/applicant

P.M. NJOROGE

JUDGE