



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 76 OF 2017

**NKOYAI MARANGU M'IMUNYUA (ON BEHALF OF THE ESTATE OF
GERVASIO MUTUA M'IMUNYUA.....APPLICANT**

VERSUS

BEATRICE NJWIRI M'THIRUANT.....1ST DEFENDANT

TERESIA KALIUNTU KAIBUNGA.....2ND DEFENDANT

JOSPHAT KIRAITHE MUTUA.....3RD DEFENDANT

JAMES RUTANYA MUTUA.....4TH DEFENDANT

BENSONE MURURU MUTUA.....5TH DEFENDANT

JACOB MUTUMA M'MUTUNGA.....6TH DEFENDANT

**LAND ADJUDICATION AND SETTLEMENT OFFICER TIGANIA DISTRICT...7TH
DEFENDANT**

LAND REGISTRAR MERU SOUTH.....8TH DEFENDANT

**THE HONOURABLE ATTORNEY GENERAL.....9TH
DEFENDANT**

RULING

1. This application is brought to Court by way of a Notice of Motion is dated 16th day of March, 2017 and seeks order:-

1) Spent

2) That this honorable Court be pleased to issue an order restraining the 1st, 2nd, 3rd, 4th, 5th and 6th defendants/Respondents, their servants, employees, and agents from entering, trespassing upon, cultivating, upon, fencing off, building on, harvesting from, transferring, selling, purporting to extinguish rights in relation to, or in any other way interfering with the Suit Land herein which for the avoidance of doubt is all that piece of land formerly known as Numbers NYAMBENE/KITHEO/1285, 2235, 3353, 3354, 3352, 3351 and 2233 pending the hearing and

determination of this application.

3) That this Honourable Court be pleased to issue an order restraining the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants/Respondents, their servants, employees, and agents from entering, trespassing upon, cultivating upon, fencing off, building on, harvesting from, transferring, selling, purporting to extinguish rights in relation to, or in any other way interfering with the suit land herein which for the avoidance of doubt is all that piece of land formerly known as Land parcel No. 406 Kitheo Adjudication Section and now known as land parcels L.R Numbers NYAMBENE /KITHEO/1285, 2235, 3353, 3354, 3352, 3351 AND 2233 pending the hearing and determination of this suit.

4) That this Honourable Court be pleased to issue an order compelling the 7th Respondent to release to the Applicant and this Court the objection proceedings relating to pieces of land formerly known as Kitheo Adjudication Section P No.97 and P. No 406.

5) That the Costs of this Application be in the cause.

2. The Application is based on the grounds that:-

a) The Land known as Land Parcel Number 406 Kitheo Adjudication Section belongs to Gervasio Mutua M'IMunyua who passed away on 28th September, 1995.

b) The Applicant holds grant of letters of administration ad litem in respect to the estate of GERVASIO MUTUA M'IMUNYUA who is her husband and there have been no succession proceedings in any court regarding any other right arising from his estate.

c) The land that was known as Land Parcel Number 406 Kitheo Adjudication Section has since the death of GERVASIO MUTUA M'IMUNYUA being subdivided parceled out and fraudulently registered in the names of certain people as Land Parcels L.R Numbers. NYAMBENE/KITHEO/1285, 2235, 3353, 3354, 3352, 3351 and 2233.

d) The people in whose name the land has been fraudulently registered are now conspiring to have the Plaintiff, who is a rightful beneficiary of the estate of GERVASIO MUTUA M'IMUNYUA removed from and dispossessed of the land belonging to her late husband and are using threats that undermine her well-being and safety in order to achieve their means.

e) The 7th Respondent has refused despite numerous requests to provide the Plaintiff with the land adjudication proceedings relating to the suit land parcel Number 406 Kitheo Adjudication Section and those relating to its parent land Parcel Number 97 Kitheo Adjudication Section which Applicant requires to prove her case in Court.

3. The application was served but only the Attorney General appeared for 7th, 8th and 9th defendants. The Attorney General has no objection to the grant of the orders sought for.

Injunction is a discretionary remedy. It is not granted as a matter of Right.

Even if the application is unopposed by the Attorney General and even if 1st -6th defendant have not filed any response, this Court still has to analyze whether the orders are meritorious or not. In the case of **Charter house investment Ltd vs. Simon K. Sang & 3 Others (2010) eKLR the court of appeal had observed that;**

“Injunction is an equitable and discretionary remedy.....the award of temporary injunction by a court of equity has never been guaranteed as a matter of right”.

The plaintiff's claim is that she has a grant in respect of letters of administration for the estate of Gervasio Mutua M'Imunyua and that deceased was the registered owner of Parcel No. 406 Kitheo Adjudication

Section.

However, the current state is that titles were issued in respect of the suit land. There are 7 titles. Defendants are the registered owners of the parcels of land as outlined in paragraph 14 of the Plaint. The effects of such registration are captured under **S. 24 and 25 of the land registration Act**. Such titles can still be impeached if found to have been acquired unlawfully – **see article 40 (6) of the Constitution**. According to Plaintiff, the titles were acquired through fraud. At this interlocutory stage, this Court is not seized of the full facts, if anything, the issue of fraud requires prove in a full trial.

I therefore find that the application has not met the threshold set out in Giella Vs. Cassman Brown.

The application is hereby dismissed, with costs to respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 21ST DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF:

CA: Janet

Mammu : I am for applicants

Kiongo: for 7th, 8th, 9th defendants.

Hon. L.N. MBUGUA

ELC JUDGE