



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO 119 OF 2016

IN THE MATTER OF: SECTION 38 OF THE LIMITATION OF ACTION ACT CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF: SECTION 28 (h) OF THE LAND REGISTRATION ACT NO.3 OF 2012

AND

IN THE MATTER OF: a claim for title by adverse possession over L.R NO ITHIMA/NTUNENE/596 BY PENINA MWARANIA GICHUNGE (Suing as the administrator of the estate of the late JACOB GICHUNGE MUCHEKE (DECEASED))

BETWEEN

PENINA MWARANIA GICHUNGE

(Suing as the administrator of the estate of the

late JACOB GICHUNGE MUCHEKE

(DCD).....APPLICANT

VERSUS

STANLEY MWAA M'ALUMA.....RESPONDENT

RULING

1. This application is dated 28th July, 2016 and seeks orders:-

(1) That for reasons to be recorded , this application be certified as urgent and service of the same be dispensed with in the first instance.

(2) THAT pending the inter parties hearing of this application, a temporary injunction do issue restraining the respondent whether by himself, his agents, servants or any other person claiming through him or under him from transferring, assigning , building, trespassing, entering upon, charging, leasing or in any other manner whatsoever interfering with the Applicant's quiet user and occupation of L.R NO. ITHIMA/NTUNENE/596.

(3)THAT pending the hearing of this suit, a temporary injunction do issue restraining the Respondent whether by himself, his agents, servant or any other person claiming through him or

under him from transferring, assigning, building, trespassing, entering upon, charging, leasing or in any other manner whatsoever interfering with Applicant's quiet user and occupation of L.R. NO. ITHIMA/ NTUNENE/ 596.

(4) THAT an inhibition do issue preventing any further entries into the register relating to LR. NO. ITHIMA/NTUNENE/596 as would be adverse to the Applicant pending the hearing of this suit.

(5) THAT the costs of this application be borne by the respondent.

2. The application is supported by the Affidavit of PENINA MWARANIA GICHUNGE, the applicant and has the following grounds:-

a) The Applicant's husband Jacob Gichunge Mucheke , who died on 9th September, 2001, had purchased LR NO. ITHIMA/NTUNENE/596 from the Respondent's father, M'Aluma Thabuambi, for valuable consideration through a sale agreement dated 29th January, 1974 drawn and attested by Mr. M.M. Kioga, Advocate.

b) By virtue of the said agreement, vacant possession was immediately granted to the Applicant's husband aforesaid and he immediately established his family home thereon where they have lived quietly, notoriously and uninterrupted for the past forty two (42) years.

c) Unfortunately M'Aluma Thabuambi passed on in the year 1991 before he could transfer the suit to Jacob Gichunge Mucheke, who also died on 9th September, 2001.

d) The Applicant contends that the Respondent herein obtained the title to the suit land via transmission through sham and fraudulent succession proceedings in which he listed the suit land herein as the sole asset of M'Aluma Thabuambi (deceased) yet the latter had already settled his family elsewhere upon the sale of the suit land to Jacob Gichunge Mucheke (deceased) .

e) The Respondent and his family members, accompanied by strangers, have now taken to visiting the Applicant's home and threatening to forcibly take over the property and sell all the assets therein, and especially so the miraa crop which is harvested monthly, and are also threatening to sell the suit land by virtue of the title they now hold through fraudulent means.

f) There is genuine apprehension on the part of the applicant, a retired teacher who is now sixty five (65) years old that she stands to be evicted or dislodged from control of the only asset she has known as her matrimonial and family home since 1974 together with her children and grandchildren.

g) The Applicant being entitled to be registered in title as the owner of the suit land stands to suffer irreparably if the respondent and other people claiming title through the respondent are not restrained by an order of this Honourable Court from their unmerited actions.

h) If the said Interim Orders are not granted , the Respondent and other persons claiming title through him will proceed and dispose of the suit land or otherwise forcibly take it over, thereby depriving the Applicant's family of her proprietary rights over the same and causing irreparable damage.

3. On 6th September, 2016, the parties proffered a Consent which was properly signed by their Advocates. The Consent is in the following terms.

“By consent

(1) The status quo as at 3.8.2016 be maintained to the effect that an Inhibition be issued on Land Parcel No. ITHIMA/NTUNENE/596 and the Plaintiff do continue to enjoy quiet user,

occupation and possession of land Parcel NO. ITHIMA/NTUNENE/596 pending hearing and determination of the suit.

(2) The matter do proceed for hearing by way of viva-voce evidence.

(3) The parties be at liberty to put in supplementary witness statements and comply with order 11 of the C.P.R.

4. The Consent is adopted as an order of this Court.

5. The Plaintiff is granted 30 days to fully comply with Order 11, CPR.

6. The Respondent to fully comply with order 11 CPR within 30 days after being served with the Plaintiff's compliance documents.

7. The application dated 28/7/2016 is deemed heard and marked as settled.

8. Costs shall be in the cause.

9. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 6TH DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-

CC: Lilian/Daniel

Ken Muriuki for the Applicant

Ondieki for the Respondent.

P.M. NJOROGE

JUDGE