



**M'inoti v Murangiri & 8 others (Environment & Land Case
E007 of 2023) [2024] KEELC 3245 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 3245 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E007 OF 2023**

CK YANO, J

MARCH 7, 2024

BETWEEN

ESTHER REGERIA M'INOTI PLAINTIFF

AND

ZACHARIA MURANGIRI 1ST DEFENDANT

SABASTIAN MUTIRIA M'INOTI 2ND DEFENDANT

NICHOLAS MUTUIRIA M'INOTI 3RD DEFENDANT

FLORENCE NKATHA 4TH DEFENDANT

JEDIEL MURIKI MURUNGI 5TH DEFENDANT

FREDRICK MURIKI MURUNGI 6TH DEFENDANT

LAND REGISTRY MERU 7TH DEFENDANT

**THE SUB COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER
IMENTI NORTH, SOUTH, CENTRAL AND BUURI 8TH DEFENDANT**

THE HON. ATTORNEY GENERAL 9TH DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion application dated 17th October, 2023 filed by the plaintiff seeking an order of inhibition against LR No. Ruirirwarera/1310 and the resultant parcels of land namely Parcels of land LR Nos. Ruirirwarera/10238,10239,10240,10241 and 10242 and temporary injunction restraining the defendants whether by themselves, their agents, servants or anyone acting on their behest, from trespassing on, cultivating selling, dividing or in any way utilizing the suit land pending the hearing and determination of this court.



2. The application is brought under Section 3 & 3A of the Civil Procedure Act and Order 40 Rule 1, 2, and 3 of the Civil Procedure Rules and all enabling provisions of the law and is premised on the grounds thereon and supported by the affidavit of Esther Regeria M’Inoti the applicant sworn on 17th October 2023.
3. The Plaintiff avers that her late mother, one Boronica Kanuku who died in 2003 was the recorded owner of LR No. Ruiiri/Rwarera/1310. That the 1st to 6th Defendants who are her brothers or their widows and children illegally subdivided the suit land among themselves leaving out the plaintiff and her sisters which amounts to gender discrimination which is against the Constitution and natural laws of justice (sic). The plaintiff avers that she has been cultivating the suit land together with her siblings since 1984. That in September 2023 when she went to the land she was shocked to find that all the trees she had planted and nurtured had been cut down and sold by the defendants to third parties. Copies of photographs of the tree stumps marked Ex1 are annexed. That she reported the matter to the police at Ruiiri. A copy of the OB number marked “Ex2” is annexed.
4. The plaintiff states that before her demise, her mother had given instructions that the land be divided equally among all her children namely Paul Murithi, Esther Regeria, Zacharia Murangiri, Jennifer Mukomunene, Salome Kanyiri, Nazarene Kinya, Margaret Kanana, Julius Muriungi and Sebastian Nturibi.
5. The plaintiff further states that she wrote a letter to the Land Registrar Meru County asking for a status of LR No. Ruiiri/Rwarera/1310 and the subcounty Land Adjudication Officer Imenti North, Imenti South, Imenti Central and Buuri replied via a letter dated 3rd October, 2023 in which he attached copies of proceedings in his office which showed how the 1st to 6th defendants shared the land amongst themselves while leaving out the plaintiff and her sisters. The said letters are marked Exh.3, Ex4, and Ex.5 respectively. It is the plaintiff’s contention that it is discriminatory and against the Constitution of Kenya to deny her and her sisters land based on their gender. That it is only fair that this court issues the orders sought in order to prevent injustice pending the hearing and determination of this suit.
6. The 1st to 6th Defendants filed a replying affidavit sworn by Zachariah Murangiri on 15th November, 2023. They admit that they are the children of Boronica Kanuu who passed away on 1st February, 2004. A copy of death certificate marked “ZM1” has been annexed. That the deceased had been allocated 7 acres in Ruiiri/Rwarera/Adjudication Section and the land was registered in her name as LR Ruiiri/rware/1310.
7. The 1st to 6th defendants deny that the deceased gave instructions that the suit land be divided equally/equitably amongst all her children as alleged by the plaintiff. It is their contention that before her demise, the deceased had made the necessary application to the land adjudication and settlement officer for sub-division and transfer of the resultant portions as follows:-Paul Murithi 1.5 acresJulius Muriungi 1.5 acresZacharia Murangiri 1.5 acresSebastian Nturibi 1.5 acresNicholas Mutwiri 1 acre
8. A copy of letter dated 8th April, 2003 and marked “ZM2” has been annexed. That consequently, and pursuant to the said application dated 8th April, 2003, the District Land Adjudication and Settlement officer upon collection of Objection fees of Ksh. 500/= conducted proceedings on 9th April, 2003 whereupon the application for sub-division and transfer was allowed. Copies of the DLSO proceedings of 9th April, 2003 and the receipt are annexed and marked “ZM3 & 4”. That subsequently Paul Murithi and Julius Muriungi passed on before the Adjudication record was finalized and therefore pursuant to objection number 1434 proceedings which were conducted on 16th May, 2018, Florence Nkatha Paul (4th defendant) being the widow to Paul Murithi replaced him while Jediel Muriuki Muriungi and Fredrick Kiogora Muriungi (5th and 6th defendants respectively) being sons of Julius Muriungi replaced



- their deceased father. The 1st to 6th defendants referred the court to annexure 5 in the applicants affidavit.
9. The 1st to 6th defendant deny sharing the suit land amongst themselves after the death of their mother. They also aver that the applicant has never occupied the suit land, though they added that the applicant was licensed by the late Julius Muriungi to use for cultivation. That upon the demise of Julius Muriungi, his sons the 5th and 6th defendants took over exclusive possession and occupation and continue to utilize it exclusively to date. They accused the applicant of misleading the court with the hope of unlawfully possessing and use land which was transferred over two decades ago from the person she claims a right. That the applicant has not approached the court with clean hands and that the orders sought are purely actuated by malice and ill-will in order to limit enjoyment of their proprietary rights which they acquired rightfully and procedurally. They urged the court to dismiss the application with costs.
 10. The application was canvassed by way of written submissions which were duly filed by the advocate for the plaintiff and advocate for the 1st to 6th defendants. I have read and taken the same into account and I need not reproduce it in this ruling.
 11. The issue is whether the injunction orders and inhibition should issue in favour of the plaintiff/ applicant. The conditions for the grant of temporary injunction were laid in the case of *Giella v Cassman Brown & Company Limited* (1973)EA 358 as follows:

“first an applicant must show a prima facie case with a probability of success secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience”.
 12. Has the applicant made out a prima facie case with a probability of success? In the case of *Mrao Limited v First American Bank of Kenya Limited & 2 Others* (2003) LKLR 125, a prima facie case was described as follows:-

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case” It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.
 13. In this case there is no dispute that the applicant and the 1st to 6th respondents are sibling’s other are the widows or children of their deceased brothers. It is not in dispute that their late mother, Boronica Kanuu was the registered owner of the suit land LR No. Ruiiri/Rwarera/1310. The applicant’s case is that the respondents illegally and fraudulently subdivided the land amongst themselves to the exclusion of the applicant and her sisters. The applicant’s contention is that they were discriminated against because of their gender which is unconstitutional and against the law. Among the prayers sought by the applicant in the suit are an order quashing the said subdivision and have the land revert to its original number as well as an order directing that the land be divided equally among all the children of their deceased mother who was the original owner of the suit land. The 1st to 6th respondents on their part contend that before her demise the deceased made an application to subdivide the land and have the resultant portions transferred to them in the manner they have shown. They therefore deny sharing the land amongst themselves after the death of their mother.



14. In my considered view, the issues raised by both parties can only be dealt with at the trial. From the evidence and material on record, I find that the applicant has established a prima facie case with a probability of success. As both parties are laying a claim to the suit land which was originally owned by their mother who is now deceased, it is my view that the property should be preserved pending the hearing and determination of the suit. The 1st to 6th respondents are already registered as owners of the suit property. No doubt if the respondents went ahead to sell, transfer or dispose of the property, the applicant stands to suffer irreparable harm not compensable in damages and the suit may also be rendered nugatory.
15. Besides the order of temporary injunction the applicant is also seeking an order of inhibition. The order of inhibition is provided for under Section 68(1) of the *Land Registration Act*. This section gives the court discretion to inhibit registered dealings on land for a particular time or until the occurrence of a particular event. As such an inhibition order is an order which is in the nature of prohibitory injunction restraining dealings, on land pending further orders of the court. The purpose of the said order is to preserve the property, in question from acts that would otherwise render a court order incapable of being executed and or give an opportunity to hear and decide the matter. In an application for orders of inhibition, the applicant has to show that the suit property is at the risk of being disposed off or alienated or transferred to the detriment of the applicant unless the orders are issued, that the refusal to grant orders of inhibition would render the applicant's suit nugatory and that the applicant has an arguable case.
16. From the depositions on record, it is more probable that the issues at hand call for status quo to be maintained pending the hearing and determination of the suit.
17. Therefore, I will exercise my discretion and allow the application dated 17th October, 2023 in the following terms:-
 - a. An order of inhibition is hereby issued against LR Nos. Ruir/rwarera/1310 and the resultant subdivisions being parcels of land LR Nos. Ruir/rwarera/10238, 10239, 10240, 10241 and 10242 pending the hearing and determination of this suit.
 - b. An order of temporary injunction is hereby issued restraining the 1st to 6th defendants or anyone else acting at their behest from selling alienating and dividing the parcels of land pending the hearing and determination of this suit.
 - c. Considering that the parties are close family members being siblings, I order that parties bear their own costs of the application.
18. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF MARCH, 2024

HON. C. YANO

ELC – JUDGE

In the presence of:-

Court Assistant: Tupet

No appearance for applicant

No appearance for respondent

