



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 350 OF 2015

MARGARET W. MUCHINA (Suing on behalf of

Gitau Muchunu Vide Power of Attorney

registered as P/A No. 249 of 2014).....PLAINTIFF

VERSUS

EUNICE NJERI.....1ST DEFENDANT

MUKINYE FARMERS CO-OP SOCIETY LTD....2ND DEFENDANT

RULING

***(Application for an order of inhibition; no evidence challenging the proprietor's title presented;
application dismissed***

1. By plaint filed on 7th December 2015, Gitau Muchunu commenced these proceedings through his attorney Margaret W. Muchina pursuant to power of attorney registered as P/A 249 of 2014. Subsequently, the plaintiff filed Notice of Motion dated 13th July 2017 seeking the following orders:

1. Spent.

2. That a prohibitory Order do issue prohibiting any dealings with land parcel Gilgil/Karunga/5/228 pending the full hearing and determination of this matter.

3. That summons to enter appearance in this matter be re-issued and this honourable court do direct that service upon the 1st Respondent/Defendant be by way of substituted service and by posting the same to the 1st Respondent/Defendant through her known last address of P. O. Box 137 Gilgil.

4. That the cost of this application be provided for.

2. Prayer 3 was dealt with at the certificate of urgency stage thus leaving only prayers 2 and 4. The application is supported by an affidavit sworn by Margaret W. Muchina on 13th July 2017. She deposes that the 1st defendant is in possession of the original title deed for Gilgil/Karunga Block 5/228 and she therefore fears that she may transfer or charge the property to defeat the cause of justice. The affidavit seems to have been aimed largely at supporting the prayer for leave to effect substituted service of summons to enter appearance upon the 1st defendant. It does not say much about why, besides the

applicant's fears, an inhibition should be granted.

3. The defendants neither attended court nor filed any response to the application. Being satisfied that service had been effected, the court allowed the hearing of the application to proceed. The applicant urged the court to allow the application.

4. I have considered the application and the evidence filed in support of it. According to the applicant, the 1st defendant is the registered proprietor of the suit property and is in possession of the original title deed. As a registered proprietor, the 1st defendant is entitled to full benefit of the rights and privileges referred to under Article 40 of the Constitution and Sections 24 to 26 of the Land Registration Act.

5. The applicant prays that an inhibition be granted against the 1st defendant's property. Inhibitions are provided for at sections 68 and 69 of the Land Registration Act. The two sections provide as follows:

68. Power of the court to inhibit registered dealings

(1) The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease

or charge.

(2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.

(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.

69. Effect of inhibition

So long as an inhibition remains registered, any instrument that is inconsistent with the inhibition shall not be registered.

6. As explained at section 69 of the Act, the effect on an inhibition is that once registered, it curtails the power of the registered proprietor of land to freely deal with his land. It is an order that the court should not grant lightly. The applicant should clearly demonstrate a prima facie case that has a probability of success. Probability of success in the context of this case means that at the conclusion of the main suit, the applicant should have the likelihood of obtaining cancellation of the defendant's or respondent's title. Such a likelihood must be manifest from the evidence in support of the application.

7. The applicant has not supported the application by any evidence that shows a challenge to the 1st defendant's title. No allegation of fraud or misrepresentation is made against the 1st defendant in the supporting affidavit. All that is deposed is that the 1st defendant is in possession of the original title deed for the suit property and that the applicant therefore fears that the 1st defendant may transfer or charge the property to defeat the cause of justice. Both possession of original title documents and dealing in the property are matters within the right of the 1st defendant as registered proprietor. Such rights can only be curtailed on the basis of concrete evidence. I see none here.

8. In view of the foregoing, I am not persuaded that an order of inhibition is merited in the circumstances. The prayer for inhibition is dismissed. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 14th day of December 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Margaret W. Muchina present in person for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: Gichaba