



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUSIA

ELC NO. CASE NO. E012 OF 2020 (O.S)

STEVEN OLANDO OTSIENO.....APPLICANT

VERSUS

STANSLAUS OKOTH NDUBI.....1ST RESPONDENT

LAWRENCE ODUYA OTSIENO.....2ND RESPONDENT

RULING

1. The Applicant brought the present application under the provisions of section 68 of the Land Registration Act to be granted the following ORDERS:

a. That an order be and is hereby issued inhibiting any dealings on

L.R No. MARACHI/ELUKHARI/1092 until the suit herein is heard and determined;

b. Costs of the application be in the cause.

2. The Application was supported by the affidavit of **STEVEN OLANDO OTSIENO** dated 21st June, 2021 and on the following grounds;

a. THAT, the subject matter of the suit herein is LR No. MARACHI/ELUKHARI/1092;

b. THAT the Respondents herein are pursuing subdivision of L.R No. MARACHI/ELUKHARI/1092 which action will complicate the matter herein and occasion unnecessary delay;

c. That it is in the interest of justice for status quo to be maintained until the case herein is heard and determined.

3. The Respondents opposed the Application on the 21st September, 2021 on the following GROUNDS:

a. That the Application is an abuse of the Court process as it seeks to stay proceedings in a succession cause to which this Court has no jurisdiction;

b. That the application is an afterthought, and without merit;

c. That the Applicant will suffer no prejudice given that he has remedy against the administrator to the estate of Musundi Otieno to whom the suit property relates;

d. That the application is frivolous and ought to be dismissed with costs.

4. During the hearing of the application on the 10th of October, 2021, parties agreed to canvass the application by way of written submissions. The Applicant filed his submissions on the 19th of October, 2021. He submitted that the Respondents are the administrators of the estate of the late Musundi Otsieno who was the former proprietor of the suit land. He submitted that he had acquired 0.6Ha of the suit property and the administrators have registered the same in their names and are seeking to subdivide it and create new numbers without considering the share he presently occupies. That the portion is clearly demarcated on the ground and the same does not form part of the Succession cause. He urged this Court to maintain the status quo of the matter in the interests of greater justice.

5. The Applicant relied on the case of **Joel Mugambi Mukira & 2 others vs. County Government of Nyeri (2019) eKLR** where Oundo J., quoted the decision of the by the Court of Appeal in the case of **Mugah vs Kunga (1988) KLR 748, that in land matters status quo order should always be issued for purposes of preserving the subject matter.**

6. The Respondents filed their submissions on the 23rd of November, 2021 stating inter alia, that this Court was devoid of jurisdiction to handle a matter that was already pending in the Lower Court. That the Applicant had filed an objection in the proceedings of Succession Cause No. 268 of 2020 in the Lower Court. They submitted further that unless an appeal is preferred against the decision of the lower court or an application for judicial review, the Applicant cannot call upon this Court to exercise supervisory jurisdiction in the P&A case. The Respondents sought to distinguish the case relied on by the Applicant by stating that the same referred to an injunction in a transaction for the transfer of land and not a Succession cause. They urged this Court to disallow the application

7. The Applicant moved this court by way of an originating summons seeking to be declared as the owner of a portion of L.R Marachi/Elukhari/1092 measuring 0.6ha. He is seeking orders of inhibition to preserve the suit title pending hearing and determination of his claim. The Respondent is opposed to the grant of inhibitory orders on account of the reasons enumerated in their grounds of opposition. The Respondents do not deny that they have an intention to subdivide the suit land. The Applicant has demonstrated that intention by annexing copies of notices issued by the survey office of the intended visit to the suitland.

8. The Respondents have argued that the Applicant wishes to stay proceedings in a succession cause which step amounts to an abuse of the court process. In paragraph 4 of the affidavit in support of the motion, the Respondents are sued as being personal representatives of the estate of the deceased registered owner of the suit property. The inhibition is intended to restrain them from undertaking a process using powers obtained from the succession case that would definitely prejudice the Applicant as the basis of his cause of action would change.

9. The Respondents further argued that this application is an abuse of the court process. The right to adverse possession cannot be adjudicated in a succession claim hence this suit cannot be said to be subjudice the cited succession cause. Secondly, the rights of Applicant as a party bringing a claim against the estate of the deceased ought to be determined before the land can be shared to the beneficiaries of the Musundi Otieno. This application and the entire suit doesnot in any way breach the processes being undertaken in the succession cause.

10. In concluding, it is my considered finding that the current application is merited. The orders of inhibition be and is hereby issued inhibiting any dealings on L.R No. MARACHI/ELUKHARI/1092 until the suit herein is heard and determined. Each party to bear their respective costs of the suit.

DATED, SIGNED & DELIVERED AT BUSIA THIS 31ST DAY OF MARCH, 2022.

A. OMOLLO

JUDGE