



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC SUIT NO. 965 of 2016**

**ALI HANGAYA MAYUKI.....PLAINTIFF**

**=VERSUS=**

**EMMANUEL MAHISU SIKU.....1<sup>ST</sup> DEFENDANT**

**WASHINGTON RURIGI KINGORI.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff/applicant filed a Notice of Motion dated 9<sup>th</sup> August 2016 in which he sought the following orders:-

**1. Spent**

**2. Spent**

**3. That the Honourable Court do issue a temporary injunction to restrain the defendants/respondents by themselves, their agents or servants from entering, transferring or in any way with Plot No. 2304 measuring 0.0160 Ha Nasra Estate Nairobi registered as IP/A 64388/1 described in allotment letter Reference Number 81391/1300 also known as KIAMBU/DANDORA/1300 (New Survey No.2304) until the hearing and determination of the main suit herein.**

**4. That the costs of this application be provided for.**

2. The applicant purchased plot No. 2304 measuring 0.0160 hectares at Nasra Estate Nairobi through an agent called Jane Odhiambo (suit property). The allotment letter for the plot had been issued to John Ngumba but the sale was done by Rose Wambui Kabogo on behalf of John Ngumba. The allotment reference number is 81391/1300 also known as Kiambu/Dandora/1300(New Survey No.2304).

3. The applicant paid fees for change of ownership at Kiambu Dandora Farmers Company Limited and the plot was duly registered under his name. The applicant who was residing in Tanzania later discovered that upon the demise of Jane Odhiambo who was staying in Nairobi with the first respondent, the first respondent took his documents from Jane Odhiambo and forged a power of attorney which he used to sell the suit property to the second respondent.

4. The applicant went and filed a suit against the respondent at Milimani Chief Magistrate's Court where he obtained injunctive orders against the respondents. This suit was however withdrawn when there was a case in court regarding the jurisdiction of magistrates to handle land matters.

5. The applicant denies ever giving power of attorney to the first respondent to sell the suit property. The applicant contends that he carried out investigations to establish the authenticity of the stamp on the power of attorney and found out that the lawyer who is purported to have witnessed him sign the documents did not do so.

6. The first respondent has opposed the applicant's application through a replying affidavit sworn on 13<sup>th</sup> January 2017. The first respondent maintains that he had power of attorney from the applicant to deal with the suit property; that he sold the suit property to the second respondent pursuant to the said power of attorney. The second respondent is now the registered owner of the suit property; that the applicant used to send documents to him through courier from Tanzania.

7. The second respondent opposed the applicant's application through a replying affidavit sworn on 27<sup>th</sup> November 2017. He contends that he bought the suit property from the first respondent after being convinced that the first respondent had power of attorney from the applicant.

The second respondent further contends that he no longer has interest in the suit property which he sold to a third party to avoid being profiled in negative light by the Credit Reference Bureau.

8. I have carefully considered the applicant's application as well as the opposition thereto by the respondents. I have also considered the submissions by the parties herein. This being an application for injunction, the applicant is expected to demonstrate that he has a prima facie case with probability of success. The only issue therefore is whether the applicant has met the threshold for grant of injunctive orders.

9. There is no doubt that the applicant purchased the suit property through his agent one Jane Odhiambo who is now deceased. The records held by Kiambu Dandora Farmers Company Limited were changed into the applicant's name upon payment of the requisite fees. The first respondent contends that he was given power of attorney by the applicant and that he sold the suit property pursuant to that power of attorney. The applicant denies ever giving such power to the first respondent. I have looked at the alleged power of attorney and the documents which are purported to have been used to send documents from Tanzania to the first respondent. There are issues which need to be interrogated on those documents and this can only be done at a full hearing.

10. The second respondent says that he is no longer interested in the suit property as he has already sold it to a third party. He does not disclose the said third party to whom he sold the land and that third party has not sought to be enjoined in these proceedings. It is the applicant who is in possession of the suit property. From the material presented before me, I find that the applicant has made out a prima facie case which warrants issuance of an injunction. The balance of convenience even tilts in favour of the applicant. I therefore find that the applicant's application has merit. The same is allowed in terms of prayer (3) and (4).

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 14<sup>th</sup> day of February, 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :

M/s Macheru for 2<sup>nd</sup> Defendant

M/s Makobu for Mr Kahuthu for Plaintiff

Court Assistant : Hilda

**E.O.OBAGA**

**JUDGE**