



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ELC CIVIL SUIT NO. 302 OF 2015**

**IDDI SHILLINGI ABDALLA.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**SAUDA SULEIMAN ALI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**EDWARD K. MULONGO.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The application before Court is dated 13.11.2015 in which the applicant/plaintiff seeks the following orders ;

**1) Spent**

**2) Spent**

**3) That the 2<sup>nd</sup> Defendant/Respondent by himself, his agents and/or servants and/or employees and/or anybody acting through him be restrained from trespassing and/or developing and/or do any activity on the house with land measuring approximately 51 ft by 76 ft at Majengo Mapya in Likoni pending hearing and determination of this suit.**

**4) That the OCS, Likoni Police Station be ordered to supervise and/or implementation of these orders.**

**5) The costs of this Application be awarded to the Applicant.**

2. The application is supported by an affidavit and grounds listed on the face of the application. It is the applicants' case that he bought the suit property from the 1<sup>st</sup> Respondent/Defendant. The applicant annexed a copy of the sale agreement between the 1<sup>st</sup> Defendant and himself to buttress his claim.

3. The 1<sup>st</sup> defendant has not filed any document to oppose the application. The 2<sup>nd</sup> Respondent/Defendant filed a detailed replying affidavit. The 2<sup>nd</sup> respondent is also laying claim to the suit property having bought the same from Johnstone Muhindi Muteve who was husband to the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Respondent deposed that the vendor had placed a restriction through the area Chief hence the property was not available for sale by the 1<sup>st</sup> defendant. In support of his claim, he annexed a sale agreement undated but executed on 4.4.14, paying – in slip to an account held by the seller

(Johnstone), a letter to the Chief by Mr Muhindi and letter of withdrawal and transfer agreement.

4. From the pleadings, it is apparent the 1<sup>st</sup> Defendant and Johnstone Muhindi were a couple but have since divorced. The 1<sup>st</sup> Defendant sold the land to the Applicant on 18<sup>th</sup> September 2013 while her husband sold to the 2<sup>nd</sup> Defendant on 4.4.14 the same parcel of land. Mr Johnstone Muhindi has not been joined in these proceedings although at one point his participation may be necessary.

5. The applicant submits that since his agreement was the first in time, he is entitled to the orders sought. The 2<sup>nd</sup> defendant submits otherwise and argue that the vendor Johnstone Muhindi had placed a caveat on 5<sup>th</sup> July 2013 through the area Chief withdrawing it only on 6<sup>th</sup> May 2014 and on which date the said Johnstone transferred the property to the 2<sup>nd</sup> defendant.

6. The property does not have a title deed. The 2<sup>nd</sup> Defendant argues the 1<sup>st</sup> Defendant did not have a good title to pass on to the applicant. The 2<sup>nd</sup> defendant has not denied that he began development on the suit property. Since both parties have paid monies for the property in dispute, it is imperative that any activity on the property be withheld for this Court to ascertain through hearing who owned the property between the 1<sup>st</sup> defendant and Johnstone Muhindi or whether they owned the property in equal shares. Secondly which of the sale agreements should be upheld.

7. Because of the circumstances of this case, I am satisfied that there is a prima facie case put forth by the applicant which has a probability of succeeding . Consequently I find that there is merit in this motion and allow it in terms of prayer 3 and 4. Each of the parties to bear their respective costs.

8. In order to preserve the suit property, the applicant is also directed not to undertake any activities on this property without leave of the Court that would prejudice the interests of 2<sup>nd</sup> Defendant.

**Ruling dated and delivered at Mombasa 13<sup>th</sup> day of May 2016**

**A. OMOLLO**

**JUDGE**