



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 35 OF 2016**

**PETER KAGUNZA ADAJI.....PLAINTIFF**

**VERSUS**

**SIKUKUU MARTIN MAIYO.....1ST DEFENDANT**

**MARGARET CHESANG MAIYO....2ND DEFENDANT**

**R U L I N G**

**BACKGROUND**

1. The second defendant/applicant is the wife of the first defendant who is the registered owner of **LR. No. Kaisagat/Chepkoilel Block 5/Amuka/13** which is about **9.3 acres** (3.768 hectares) (suitland). On **24/3/2008**, the respondent bought **1.5 acres** from the suitland. On **15/4/2009** the respondent purchased **0.5 acres** and finally on **15/1/2010** he bought the remainder of the suitland with the developments thereon at a consideration of **Kshs.3,500,000/=** which amount was paid in full to the first defendant.

2. The applicant later raised issues over the sale of the suitland by the husband. A meeting was held on **28/8/2012** whereby it was agreed that the respondent was to surrender back **2.25 acres** to the defendants who were to pay him **Kshs.540,000/=**. The defendants have since declined to pay the **Kshs.540,000/=** as agreed and the first defendant has declined to transfer the suitland to the respondent. The applicant went and registered a caution against the title to the suitland making it impossible for any transfer of the suitland to the respondent. The plaintiff/respondent was forced to file a suit seeking to compel the first defendant to transfer the suitland to him after the caution by the second defendant/applicant is removed.

3. The second defendant/applicant filed a defence and raised a counter-claim in which she contends that she did not give her consent to the sale of the suitland by her husband. She at the same time filed an application for injunction seeking to restrain the respondent from evicting her from the suitland.

**APPLICANT'S CONTENTION**

4. The applicant contends that she is lawfully married to the first defendant and that they have set up their matrimonial home on the suitland where they have been staying for over 30 years. The applicant further contends that prior to the respondent filing a suit against them, she had heard rumours that her husband was in the process of selling the suitland. To protect her interest, she caused a caution to be registered against the title to the suitland in or around **30/3/2012**.

**RESPONDENT'S CONTENTION**

5. The respondent contends that the applicant's application is misconceived and that it is an abuse of the

process of the court. That the applicant is not telling the court the truth. That the applicant has not been occupying the entire suitland and that there is no threat of eviction. The respondent contends that he bought the entire suitland but that the defendants later demanded that he give back part of the suitland. In a meeting held at the offices of the assistant chief of Amuka sub-location, it was agreed that the respondent was to surrender back 2.25 acres for which the defendants were to pay him Kshs.540,000/=.

6. The respondent further argues that the defendants demanded more land and that this application has been filed because he could not agree to give the defendants more land. That it had been agreed that the applicant was to remove the caution which she had lodged but that that has not happened.

### ANALYSIS

7. I have gone through the applicant's application as well as the annexures thereto and the respondent's replying affidavit and the annexures thereto. The only issue for determination is whether the applicant has made out a prima facie case for the court to grant an injunction.

8. The principles for grant of temporary injunction are now fairly settled. First an applicant must demonstrate that he/she has a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant will suffer loss which will not be compensated in damages. Thirdly if the court is in doubt, it will decide the application on a balance of convenience.

9. In the instant case, the applicant contends that she recently learnt that her husband was intending to sell the suitland without her consent. That she learnt this when the respondent served them with suit papers. A look at the documents filed herein shows that the sale of the suitland started in **2008**. Problems started coming up in or around **2012**. This was about four years after the initial purchase by the respondent. Meetings were held to iron out the problems. The applicant was present and appended her signature on these documents.

10. In one of the meetings held on 28/8/2012, the applicant indicated that she had no problem if she was given an additional one acre. The respondent had agreed to surrender 2.25 acres. In another meeting held on 8/2/2013, the applicant was to remove the caution which she had registered. The applicant has not denied that there were such meetings and understanding as contained in the minutes. The applicant cannot therefore turn round and claim that she was not aware of the sale and or that her consent was not sought.

11. The respondent paid money for the suitland. He paid over 3.5 million shillings. The applicant's husband went and bought 10 acres at Cheparus. The applicant herself and her relatives went and confirmed that indeed the husband had bought 10 acres at Cheparus. The defendants demanded to have part of the sold land back. The respondent agreed to give them 2.25 acres. The applicant is still demanding more yet they do not want to pay for it as agreed. The applicant has not come to court with clean hands.

12. This is a case where the defendants are seeking to frustrate the respondent after they have been given money, bought land elsewhere and they now want to retain what they had sold out. I do not see what prima facie case the applicant has in the circumstances. The applicant is still retaining the 2.25 acres which the respondent agreed to surrender back to them. The land is still registered in the name of the applicant's husband. There is no danger that the same will be sold by the respondent or that the respondent has threatened to evict her from the suitland. I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this **29th** day of **June, 2016**.

**E. OBAGA**

**JUDGE**

In the presence of Mr. Wanyama for Defendant/Applicant and Mr. Teti for Plaintiff/Respondent.

Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE**

**29/6/2016**