



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC NO. 998 OF 2014**

**MBUGUA KARIUKI.....PLAINTIFF**

**VERSUS**

**AGNES WAKARITI MAGONDU.....1<sup>ST</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**KAMITI FARMERS COMPANY LTD.....4<sup>TH</sup> DEFENDANT**

**SIMON NJUNGUNA NJOROGE.....5<sup>TH</sup> DEFENDANT**

**MARGARET NJOKI NJUGUNA.....6<sup>TH</sup> DEFENDANT**

**IBRAHIM KAMAU NJENGA.....7<sup>TH</sup> DEFENDANT**

**PATRICIA WANJIKU KIHURA.....8<sup>TH</sup> DEFENDANT**

**WANJIKU KIARIE.....9<sup>TH</sup> DEFENDANT**

**PETER MUNENE NDENGWA.....10<sup>TH</sup> DEFENDANT**

**RULING**

The application for determination is the one dated **28<sup>th</sup> July 2014** filed by the Plaintiff for an order of injunction to restrain the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from selling, transferring, charging, interfering, or otherwise dealing with the suit property known as **L.R. No. Nairobi Block 117/517**, pending the hearing and determination of the suit. The application is premised on the grounds outlined thereunder and supported by an affidavit sworn by the Plaintiff.

The Plaintiff's case is that by a resolution of the Board of Directors dated **7<sup>th</sup> September 2001**, the 4<sup>th</sup> Defendant authorized the sale of company plots to its shareholders and thereby confirmed the availability

of several plots including the suit property. The 4<sup>th</sup> Defendant also resolved to process title documents of the said plots upon transfer to purchasers. Following the resolution, he entered into a sale agreement with the 4<sup>th</sup> Defendant for the purchase of the suit property at a consideration of **Kshs. 250,000/-** and immediately took possession. The Plaintiff referred to annexures “**MK4**” & “**MK5**” being correspondence over the suit property between the 2<sup>nd</sup> and 4<sup>th</sup> Defendants deposing that he has been processing title to the property and in that regard corresponding with the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Plaintiff deposes that he is the legal owner of the suit property by virtue of the Transfer of Lease dated **29<sup>th</sup> September 2001**, Sub-division Scheme Approval dated **1<sup>st</sup> October 2002** and the letter dated **1<sup>st</sup> November 2002**, by the 4<sup>th</sup> Defendant instructing the Commissioner of Lands to issue a lease in his favour.

However, that the 1<sup>st</sup> Defendant is claiming title over the suit property allegedly having purchased it from the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Defendants on **22<sup>nd</sup> November 2012**. Subsequently on **29<sup>th</sup> January 2013**, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants issued the Sub-division Scheme Approval of the suit property to the 1<sup>st</sup> Defendant and thereafter the 5<sup>th</sup> and 10<sup>th</sup> Defendants holding themselves as officials of the 4<sup>th</sup> Defendants instructed the 2<sup>nd</sup> Defendant to issue a letter of allotment to the 1<sup>st</sup> Defendant. It is the Plaintiff’s deposition that as at the date of the alleged transaction between the 1<sup>st</sup> and 6<sup>th</sup> – 10<sup>th</sup> Defendants, he was the bona fide owner of the suit property and it was therefore not available for alienation by any other party. Consequently, that the 1<sup>st</sup> Defendant fraudulently obtained an illegal title to the property as the said Defendants had no interest on the property, the same having purchased by him in 2001. The Plaintiff urged the court to allow the application deposing that he stood to suffer irreparably in the event that the orders sought are not granted as the property is likely to be wasted away, damaged and/or alienated by the Defendants.

The 1<sup>st</sup> Defendant swore a Replying Affidavit on **19<sup>th</sup> September 2014**, wherein she deposed that she is the bona-fide owner of the suit property through an agreement of sale dated **22<sup>nd</sup> November 2012**, for a consideration of **Kshs. 1,550,000/-** and upon payment of the purchase price the suit property was transferred to her. It was her deposition that the Plaintiff had not exhibited any title documents to prove ownership and that his intention was to defeat her title by presenting forged documents detailing an alleged existence of a sale agreement between himself and the 4<sup>th</sup> Defendant.

**Micheal Chege Mwangi**, the vice chairperson of the 4<sup>th</sup> Defendant swore a Replying Affidavit on **30<sup>th</sup> October 2014**, wherein he deposed that the Plaintiff is the legal owner of the suit property after he purchased it from the 4<sup>th</sup> Defendant which was transferred to him on **29<sup>th</sup> September 2001**. It was his deposition that on 4<sup>th</sup> January 2005, the 5<sup>th</sup> Defendant acting as Chairperson, illegally and fraudulently allocated various commercial plots to various persons and the suit property in particular allocated to a group of 12 people including the 5<sup>th</sup> – 10<sup>th</sup> Defendants. Thus, that the transfer from the Plaintiff to the 5<sup>th</sup> – 10<sup>th</sup> Defendants was fraudulently done without the authority and consent of the 4<sup>th</sup> Defendant and they therefore could not pass a good title to the 1<sup>st</sup> Defendant.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and the 5<sup>th</sup> – 10<sup>th</sup> Defendants did not file a response to the Plaintiff’s application though duly served.

The application was canvassed by way of written submissions. On behalf of the Plaintiff, it was submitted that there was nothing to exhibit that the 5<sup>th</sup> – 10<sup>th</sup> Defendants were proprietors of the suit property before the transfer to the 1<sup>st</sup> Defendant. Further, that there was no evidence of payment of the purchase price made by the 1<sup>st</sup> Defendant. On behalf of the 1<sup>st</sup> Defendant, it was submitted that her title to the suit property cannot be defeated on the basis that there are leadership wrangles within the 4<sup>th</sup> Defendant. In relying on the case of **China Wu Yi Co. Ltd v Ederman Property Ltd & 2 Others HCCC No. 362 of 2012**, counsel submitted that the 1<sup>st</sup> Defendant need not inquire into the indoor management of the 4<sup>th</sup> Defendant and that the assertion that the transaction leading to her acquiring title is illegal on the basis

that the vendors did not act with the authority of the 4<sup>th</sup> Defendant is null and void. It was also submitted that the Plaintiff had not established the allegation of fraud on the part of the 1<sup>st</sup> Defendant and in the absence of such evidence, her title to the property deserves protection by the Court by virtue of **Section 26 of the Land Registration Act**. It was thus submitted that the Plaintiff had failed to meet the threshold for the grant of injunction orders in the absence of proof of ownership of the property and allegation of fraud on the part of the 1<sup>st</sup> Defendant.

From the narrative hereinabove, it is clear that the 1<sup>st</sup> Defendant is the title holder of the suit property. She claims to have acquired title thereto through purchase from the 5<sup>th</sup> – 10<sup>th</sup> Defendants. The Plaintiff on the other hand claims ownership of the same property averring that the same was transferred to him by the 4<sup>th</sup> Defendant upon purchase in 2001. The Plaintiff does not have title to the property. He, however, challenges the 1<sup>st</sup> Defendant's title alleging that the same was obtained by fraud. Evidently, therefore, the dispute between the parties is the ownership of the suit properties.

Whereas the 1<sup>st</sup> Defendant has availed a copy of title showing ownership of the property, the same is under challenge by the Plaintiff. The Court of Appeal in the case of **Munyu Maina v Hiram Gathiha Maina, Civil Appeal number 239 of 2009** held that:

***“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”***

Whilst the law is protective of title, **Section 26(1) of the Land Registration Act** provides instances where title can be challenged, to wit,

- a. ***On the ground of fraud, or misrepresentation which the person is proved to be a party; or***
- b. ***Where the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.***

Whether or not the 1<sup>st</sup> Defendant obtained title to the suit property illegally or through fraud is an issue that can only be determined at the trial upon further evidence. In the meantime, however, the Court is satisfied that the Plaintiff has established an interest over the disputed property and it would therefore be in the interest of justice that the same be safeguarded pending the determination of the suit.

The upshot is that the Plaintiff's application dated **28<sup>th</sup> July 2014** is merited and thus allowed as prayed. Costs of the application shall be in the cause.

It is so ordered.

Dated, Signed and Delivered this **31<sup>st</sup>** day of **July, 2015**

**L.GACHERU**

**JUDGE**

In the Presence of:-

None attendance for the Plaintiff/Applicant

None attendance for the 1<sup>st</sup> Defendant/Respondent

None attendance for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents

None attendance for the 4<sup>th</sup> Defendant/Respondents

None attendance for the 5<sup>th</sup> – 10<sup>th</sup> Defendants/Respondents

Nyangweso: Court Clerk

**L.GACHERU**

**JUDGE**

**Court.**

Ruling Read in open Court in the absence of the parties.

**L.GACHERU**

**JUDGE**