



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.16 OF 2015

SALOME WAMBUI WACHIRA.....PLAINTIFFS/APPLICANT

=VERSUS=

1. GOLDEN TEA TRADERS LIMID

2. NIC BANK LIMITED

3. JOSEPH SHIUNDU LUTTA

4. LILY K. MUSINGA

5. THE LAND REGISTRAR KILIFI.....DEFENDANTS/RESPONDENTS

R U L I N G

1. What is before me is the Application by the Plaintiff dated 9th February, 2015 seeking for the following orders:

(a) That this Honourable Court be pleased to grant a temporary injunction barring the Respondents by themselves, agent, employees, servants, proxies and/or otherwise from exercising any right/interest/benefit (if any) created and/or supposed to be created by a charge document dated 23rd September 2014 against all that parcel known as Kilifi/Kijipwa/132 pending the hearing and determination of this suit.

(b) That the Respondents be condemned to pay costs of this Application.

The Plaintiff's/Applicant's case:

2. In her Supporting Affidavit, the Applicant deponed that she is the bona fide registered proprietor of parcel of land known as Kilifi/Kijipwa/132 (the suit property); that she is a resident of Sweden and occasionally visits Kenya; that when she conducted an official search on the suit property on 23rd October 2014, she was shocked to discover that it had a restriction in terms of a charge dated 24th September 2014 in favour of the 2nd Respondent and that when she inquired, she discovered the 1st, 2nd and 3rd Defendants forged her signature on the charge document.

3. The Plaintiff deponed that she has never applied for a facility to the 2nd Defendant and that she has

never instructed the 3rd Defendant or appeared before him.

The Respondents' case:

4. The 1st Defendant/Respondent neither entered appearance nor filed a Defence.
5. The 2nd Defendant's Senior Legal Officer deponed in his Replying Affidavit that the 2nd Defendant offered to advance an overdraft facility of Kshs.4,200,000 to the 1st Defendant; that the said overdraft facility was secured vide a charge over the suit property and that the Plaintiff and the directors of the 1st Defendant executed a legal charge in favour of the 2nd Defendant for Kshs.4,200,000.
6. According to the 2nd Defendant, the bank is holding the original Title Deed of the suit property and the interests of the bank as chargee are noted thereon.
7. The 3rd,4th and 5th Respondents did not file any replies to the Application.
8. The Plaintiff's advocate filed her submission and authorities which I have considered. The Respondents did not file their submissions.

Analysis and findings:

9. The Plaintiff's case is that she has never offered the title deed in respect to the suit property to the 2nd Defendant as security.
10. According to the Plaintiff, she was out of the country on 4th September 2014 when she is purported to have appeared before Joseph Shiundu Lutta advocate to execute the charge document and the Deed of Guarantee and Indemnity.
11. Joseph Shiundu Luta advocate is the 3rd Defendant. He did not file an affidavit to state if indeed the Plaintiff appeared before him. The Plaintiff's deposition that she never appeared before the said advocate to sign the charge document is therefore uncontroverted.
12. In view of the evidence before me, I am satisfied that the Plaintiff has established a prima facie case with chances of success and unless the injunctive order is issued, the Plaintiff is likely to suffer irreparable injury that cannot be compensated if it turns out that she never charged the suit property or offered for sale the property to a third party.
13. For those reasons, I allow the Application dated 9th February 2015 as prayed.

Dated and delivered in Malindi this 20th day of **November** 2015.

O. A. Angote

Judge