



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.139 OF 2014

DAVIS AMATIKA WAODENYO.....PLAINTIFF/APPLICANT

=VERSUS=

1. ELIZA FATUMA NGOMA ABDULAZIZI

2. AFROZE OSMAN ABDULREHMAN ADAM

3. I & M BANK LIMITED.....DEFENDANTS/APPLICANTS

R U L I N G

1. In his Application dated 17th July 2014, the Plaintiff is seeking for the following reliefs:

(a) THAT an order of injunction do issue to restrain the Defendants/Respondents herein whether by themselves, their employees, servants and/or agents or assignees and/or any other person acting under them from selling, transferring or otherwise alienating or dealing in or disposing the Plaintiff's/Applicant's title and/or beneficial interest in the property known as Kilifi/Kijipwa/222 or in any manner whatsoever pending the hearing and determination of his suit.

(b) THAT the costs of this Application be provided for.

The Plaintiff's/Applicant's case:

2. The Plaintiff has deponed that the suit property is developed with a matrimonial house and premises for rental; that he purchased the suit property and caused it to be registered in the name of his wife who is the 1st Defendant and that the two are estranged.
3. According to the Applicant, the 1st Respondent attempted to sale the suit property but his sons filed cases in court.
4. However, in May 2014, he was informed that the 2nd Defendant had bought the suit property from the 1st Defendant who then charged the suit property to the 3rd Defendant.

The Defendants/Respondents' case:

5. In her Replying Affidavit, the 1st Defendant stated that there has never been any marital relationship between the Plaintiff and herself; that she bought the suit property for valuable consideration and that the Plaintiff was not a party to the Agreement of Sale.

6. The 2nd Defendant deponed that he purchased the suit property from the 1st Defendant and that he is an innocent purchaser for value.
7. The 3rd Defendant's advocate filed Grounds of Oppositions in which he averred that the Plaintiff has not made out any case for the issue of an interlocutory injunction; that the Plaintiff has not put before the court any material to show that he was married to the 1st Defendant and that the Application is scandalous, frivolous and vexatious.

Submissions:

8. The Plaintiff's advocate submitted that the 1st Defendant sold the suit property without the consent of the Plaintiff; that there was no consent of the Land Control Board to sell or charge the suit property and that the said sale is a nullity ab initio.
9. The 1st Defendant's counsel submitted that the registered proprietor cannot be enjoined from dealing with her own property; that the 1st Defendant had an absolute and indefeasible title and that the 1st Defendant has never been married to the Plaintiff.
10. The 2nd and 3rd Defendants' advocates submissions reiterated the submissions by the 1st Defendant.
11. I have considered those submissions and the authorities.

Analysis and findings:

12. The Plaintiff's prayer for a prohibitory injunction against the Defendants is predicated on the Plaintiff's prayer for a declaration that he is a beneficial owner of the parcel of land known as Kilifi/Kijipwa/222 (the suit property); that the sale of the suit property and the subsequent charging of the same was null and void and that the said transactions should be cancelled.
13. Although the Plaintiff averred that he is the one who purchased the suit property and had it registered in the name of the 1st Defendant who was his wife, the agreement dated 25th May 1992 annexed on his Supporting Affidavit shows that the suit property was purchased by the 1st Defendant.
14. Indeed, there is no evidence before the court that by the time the sale agreement of 25th May 1992 was signed by the 1st Defendant and the vendor, the 1st Defendant was the Plaintiff's wife.
15. The Plaintiff has not stated in his Affidavit when he married the 1st Defendant and what kind of marriage he had with the 1st Defendant before they separated.
16. If it is a civil or religious marriage, he would have produced a marriage certificate. If it was a customary marriage, the Plaintiff should have produced appropriate evidence to prove that.
17. Section 2 of the Land Act, 2012 defines "marriage" to mean civil, statutory or customary. In view of the absence of evidence that the Plaintiff was married to the 1st Defendant as defined under the Act, Section 93(3) of the Land Registration Act which requires spousal consent for the transfer of land cannot, prima facie, apply in the instant case.
18. Even if such a marriage is presumed, to have existed, the Plaintiff has annexed a letter dated 7th September 2011 addressed to the District Land Registrar in which he referred to the 1st Defendant as his "ex-wife". Consequently, the Plaintiff has admitted by his own documents that by the time the 1st Defendant was selling the suit property to the 2nd Defendant in 2012, he was no longer married to the 1st Defendant.
19. Consequently, I find and hold that prima facie, the Plaintiff has not established that he has the *locus standi* to raise the issue of whether the Land Control Board gave its consent before the suit property was sold to the 2nd Defendant and charged to the 3rd Defendant or not.
20. In any event, the 2nd Defendant has annexed the consent of the Board dated 2nd August 2012 showing that the Board consented to the transfer of the suit property before the same was transferred to the 2nd Defendant on 5th April 2012 and a title deed issued on 16th August 2012.
21. For the reasons given above, I find and hold that the Plaintiff has neither established a prima facie case with chances of success nor the irreparable damage he shall suffer that cannot be

compensate by an award of damages.
22. Consequently, I dismiss the Application dated 17th July 2014 with costs.

Dated and delivered in Malindi this 13th day of **November** 2015.

O. A. Angote

Judge