



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 138 OF 2012

PHILIP MUTISO MAKAU PLAINTIFF/APPLICANT

VERSUS

1. KIANDA FOUNDATION EDUCATIONAL TRUST
2. MINISTRY OF LANDS, THE CHIEF LAND REGISTRAR
3. MINISTRY OF LANDS, THE DISTRICT LAND REGISTRAR, KAJIADO DISTRICT
4. HON. THE ATTORNEY GENERAL ...DEFENDANTS/RESPONDENTS

R U L I N G

1. The application dated 2/5/2012 seeks an order that the Defendant/Respondent be restrained whether by themselves or by any other person(s) or institution(s) working on their behalf, from developing, constructing on, sealing, fencing or in any manner commencing or continuing any acts that affect the physical status of the parcel land known as **Kajiado Kaputiei Central/496** (herein referred to as 'the suit land') pending the hearing and determination of the main suit.
2. According to the affidavit in support sworn by the Applicant, **Philip Mutiso Makau** on 2/5/2012, he is the registered owner of the land parcel known as **Kajiado/Kaputiei Central/496** (hereinafter suit land), having purchased the same from one **Daniel Lairbe Ole Tirikog** in the year 1997.
3. The Applicant's complaint is that the **District Land Registry, Kajiado**, without any transfer instruments having been executed by the Applicant, transferred the suitland from the Applicant to the 1st Defendant/Respondent, **Kianda Educational Trust**. That upon inquiries the Plaintiff/Applicant was informed by the 3rd Defendant, the **District Land Registrar, Kajiado**. That the Applicant gave back the 60.7 hectare parcel of land to the seller, **Daniel Lairbe Ole Tirikog**. The Applicant's contention is that he never gave back his land to the said **Ole Tirikog** nor executed any instruments for the purported transfer. The Applicant attributes the said transfer to fraudulent activities.
4. The application is opposed. The first Defendant/Respondent filed a replying affidavit sworn by **Lairbe Tirikog** (hereafter **Tirikog**) on 15/6/2012. According to **Mr Tirikog**, he is the proprietor of land parcel **No. Kajiado/Kaputiei/496**. That the Applicant had sometimes back approached him to sell a parcel of land to him but he refused because the Applicant's offer was very low. The said **Mr Tirikog** denied having sold his land to the Applicant and denies having signed any agreement or consent to transfer his land in favour of the Applicant and termed any such transfer a forgery. **Mr Tirikog** has further stated that he had since sold the suitland to the 1st Defendant, **Kianda Foundation Educational Trust**.
5. The 2nd and 3rd Defendants/Respondents did not enter appearance though served. The application was canvassed by way of written submissions which I have duly considered.
6. The crux of this matter is whether the same **Mr Tirokog** at any stage ever sold and transferred the suit land to the Applicant. Each of the parties has made accusations and counter accusations against each other. At this stage of the case, it is not possible for this court to tell which affidavit

evidence contains the truth of the matters in question. The allegations of fraud made would be best addressed in the main suit.

7. The Applicant has filed documents herein which include copies of a Title Deed issued on 23/4/1997 for the land in question, application for consent of Land Control Board, a sale agreement and a transfer form. Whether these documents have been properly annexed to the affidavit in support or not is a matter of technicality which does not go into the substance of the matter.
8. On the other hand, **Mr Tirikog** has exhibited documents which include a Title Deed for the said land issued on 18th January 2007, a sale agreement between him and **Kianda Foundation Education Trust** (1st Defendant/Respondent) dated 7/9/2011, application for consent of the Land Control Board, a Title Deed in the name of **Kianda Foundation Education Trust** issued on 22/2/2012 and a “green card” extract. The said extract reflects issuance of a Title Deed to the suit land on 29/2/1996, registration of a caution on 24/10/96 by the Applicant who claimed a purchaser’s interest, issuance of title on 23/4/97 to the Applicant then issuance of Title to **Mr Tirokog** on 18/1/2007.
9. With the allegations and counter allegations as to who is the legitimate owner of the suitland, the best way forward is to issue conservatory orders at this stage. I am satisfied that the Applicant’s case has met the threshold for a grant of injunctive orders (see **Giella –vs- Cassman Brown & Co. Ltd. & Another [1973] EA 358**). Consequently, I allow the application with costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **19th** day of **June 2014**.

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B. THURANIRA JADEN

JUDGE