



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT NO. 133 OF 2011**

**DAVID KHAYO KOKOKO ..... PLAINTIFF**

**VERSUS**

- 1. JUMA KHAMISI JUMA**
- 2. ALEX KADENGE ONDEGO**
- 3. ROPHENCE MKAMBURI ONDEGO ..... DEFENDANTS**

**RULING**

[1] The applicant herein states that he purchased the suit property on 20th September 2002 for Kshs. 700,000 from the 1st defendant. He avers that he obtained the Bahari Land Control Boards consent on 2nd December 2002. That the 1st defendant subsequently unlawfully resold and caused the title to the suit property to be registered infavor of the 2nd and 3rd defendants. The Plaintiff avers that he is in physical possession of the suit property and that the 2nd and 3rd defendants attempted to take possession of the suit property in November 2011 forcibly and attempted to commence construction but was stopped by the Provincial Administration.

The Plaintiff attached various documents in his supporting affidavit dated 21st November 2011. Among them an agreement for sale dated 20th September 2002, a subdivision map, vouchers proving payment, various photographs showing construction, application of Land Control Board and consent dated 28th November 2002 and deed plan no. 250608 and the certificate of official search of LR. No. 4371/111/MN.

[2] The 2nd and 3rd defendants case is that by an agreement dated 17th March 2009 they purchased the suit land for Kshs. 1,400,000. That the registered proprietor obtained a subdivison certificate on 20th October 2010. That they obtained Bahari Land Control Board consent on 4th October 2010.

That on 22nd November 2010 the vendor the 1st defendant executed a transfer in their favour. That on 13th January 2011 they were registered as the bona fide purchasers of the suit parcel. They annexed the agreement for sale, subdivision certificate, application for land control consent, letter of consent and a transfer and a certificate of title to back their claim. They state that at the time of purchase there were no encumbrance registered against the suit land. They stated that they were bona fide purchasers for value without notice.

[3] These being the basic facts of the case what orders should be made on the application dated 21st November 2011.

It is not denied that the applicant herein is in possession of the suit property. Both parties have annexed agreements for sale, and land control consent for the same piece of land. The court will have to decide which one of these documents passed beneficial interest of the suit property. Deciding that at this stage will be to decide the suit at a preliminary stage. Clearly the balance of convenience on this application tilts in favour of the applicant who is currently in possession of the suit premises I need not say more on this application. The application succeeds as prayed. The suit shall be fixed for hearing for issues raised in the plaint herein.

**Dated and delivered in open court at Mombasa this 23rd day of August, 2013.**

**S.N. MUKUNYA**

**JUDGE**

No appearance for the plaintiff'

Miss. Mango for 2nd and 3rd defendants