



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**

**ENVIRONMENTAL & LAND CASE 257 OF 2010**

**MOHAMED SADIQUE ADAM ..... PLAINTIFF**

**VERSUS**

**JOHN NJUGUNA NDAUTI ..... 1<sup>ST</sup> DEFENDANT**

**JOYCE WANJIRU KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff/applicant hereinafter referred to the applicant has filed a Notice of Motion dated the 18/10/11 under sections 1A, 1B, 63(c) and (e) of the Civil Procedure Act and orders 1 rule 10 (a), 40 Rules 1,3,4 and 10(a) of the Civil Procedure rules, seeking the following orders.

i. That this Honourable Court be pleased to issue a temporary injunction against the defendants/respondents herein, their servants, agents and or employees restraining them individually and collectively, from alienating, transferring, possessing, dealing with or in whatever way with the property known as Land Reference Number 33/724 (Original No.330/177/3) Nairobi until the hearing and determination of this suit.

ii. That the costs of this application be provided for.

2. The application is based on the following grounds;-

a) The G. N. Wakahiu trading as G. N. Wakahiu & Co. Advocates is the one that prepared the indenture dated the 14<sup>th</sup> May 1996 that was fraudulently used to transfer land reference number 330/724 (original 330/724/3) Nairobi.

b) G.N. Wakahiu allegedly witnessed a fraudulent signature on the indenture dated 14<sup>th</sup> May 1996 and purporting that the signature was the plaintiff/applicant appeared before him on the 14<sup>th</sup> May 1996 when in fact the plaintiff/applicant does not know him, has never met him, has never instructed him as an

advocate and never appeared before him on the said 14<sup>th</sup> May 1996 to execute the alleged indenture.

c) The authenticity, validity and legality of the indenture dated the 14<sup>th</sup> May 1996 is in question and issue in this suit and as such G. N. Wakahiu is a necessary party to the proceedings to help the Court to effectually determine all the issues in the suit.

d) The second defendant has put in motion process to further alienate the suit property herein during the pendency of this suit and will so alienate the property unless the Court issues the preservative orders prayed for herein.

e) In the event that the suit is further alienated, the plaintiff/applicant will suffer irreparably and the process of determining the dispute herein will be prolonged by further addition of parties.

f) Neither the 1<sup>st</sup> nor the 2<sup>nd</sup> defendant/respondent have attempted to possess and develop the suit property herein after alleged acquisition, a factor that goes to prove that they are not keen to keeping the status quo unless commanded by this Honourable Court.

g) The suit property having literally been stolen from the plaintiff/applicant, it will be in the interest of justice that pending the final determination of the suit, the status quo be maintained.

h) The applicant undertakes to file a written undertaking as to damages in any event.

3. I have read the affidavits filed by the parties and these are the facts in brief; the plaintiff case is that he is the registered owner of L. R. No.330/724,(Original No. 330/177/3), that he learnt of the sale of his property through a newspaper advertisement, that he has never sold the property to anyone, that his title has been in the custody of his brother who is a lawyer and at no time did he appear before the advocate called Wakahiu and transfer the property, that the signature on the indenture is not his, that the 2<sup>nd</sup> defendants claim that she is the owner of the suit property cannot stand as he is the lawful registered owner of the said property that to preserve the property he seeks orders of injunction against the defendants.

4. The 1<sup>st</sup> defendant's case is that he bought the suit property after it was advertised in the papers and he took possession in 1998. That thereafter he sold the property to the 2<sup>nd</sup> defendant. That he is aware that the plaintiff lodged a caveat on the property and when he was served with a notice by the registrar to remove the caution the plaintiff then moved to Court and filed this suit. That from the year 1998 the plaintiff took no action, that he bought the property lawful and sold the property to the 2<sup>nd</sup> defendant.

5. The 2<sup>nd</sup> defendant's case is that she is a bona fide purchaser for good value. That she bought the suit property from the 1<sup>st</sup> defendant and has a good title. That the plaintiff's claim lies against the 3<sup>rd</sup> defendant who gave her a good title for the property after she purchased it. She asked this court not to issue the injunction sought.

6. Counsels for the parties in this suit filed written submissions. I have carefully read the said submissions together with the affidavits on record the authorities attached and I find as follows. The plaintiff claims that the suit property is his and that he has never sold and that he did not sign the indenture as claimed by the 1<sup>st</sup> defendant. Mr Wakahiu the counsel who prepared the said indenture was served after he was joined as a party to this suit but he failed to respond. Being the counsel who prepared the indenture his evidence in the matter is very important as it will reveal what he did in the matter. The indenture that he prepared led to the 1<sup>st</sup> defendant's ownership of the suit property and eventually the transfer to the 2<sup>nd</sup> defendant.

7. The applicant has a duty to show this court that he is a prima facie case with a probability of success, that he will suffer irreparable damages if the orders for injunction are not granted and if the Court is in doubt it will decide the case on a balance of convenience (see Geilla Vs. Cassman Brown E.A 1973).

Things that I have noted as I considered this ruling. The applicant is not in possession now. The applicant did lodge a caution on the property and took no action but moved to court when he was served with a notice to remove the caution. Could it be that all along he was not aware of the alleged sale? This can only be proved by way of via voce evidence. It is apparent that an indenture was done by one Mr. Wakahiu advocate. There is no affidavit from him to respond to the allegations made against him. The 1<sup>st</sup> defendant sold the suit property to the 2<sup>nd</sup> defendant; did he pass a good title? This I find can only be proved by way of viva voce evidence. The issues raised in the submissions on the principle of Lis pendens, limitation, fraud and removal of caveat can only be addressed at a full hearing. In considering all the above and what has been submitted in the submissions I find that the appropriate order in this matter is that the suit property be preserved as it is, that none of the parties shall do nothing detrimental to the suit property pending the hearing and determination of the suit. I further order that in order for this matter to be fully determined the parties shall comply with the provisions of order 11 of the CPR within 45 days from the date of this ruling. On compliance parties shall take a mention date so that the Court can direct on the hearing of the suit so that the matter is determined once and for all.

Applicant .....Present/Absent

1<sup>st</sup> Defendant ..... Present/Absent

2<sup>nd</sup> Defendant ..... Present/Absent

3<sup>rd</sup> Defendant ..... Present/ Absent

Court Clerk.....

**Dated, signed and delivered at Nairobi this 29th of May 2012.**

**R. OUGO**  
**JUDGE**