



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO. 167 OF 2007

**WEST END BUTCHERY
LIMITED.....PLAINTIFF**

V E R S U S

ARTHI HIGHWAY DEVELOPERS LTD.....	1ST
DEFENDANT	
SOLOMON MWINZI MWAU.....	2ND
DEFENDANT	
JOHN MICHENI MUSA.....	3RD
DEFENDANT	
THE ATTORNEY-GENERAL.....	4TH
DEFENDANT	

R U L I N G

When this suit was filed on 19th February 2007 the Plaintiff’s complaint was that while being the registered proprietor of L.R. No. 7149/10 (I.R. 30601) with certificate of title issued on 24th December 1976, it had discovered that the 2nd and 3rd Defendants had fraudulently and without having any interest in the company notified the Companies Registry of change of directors and brought themselves on board as directors and proceeded to cause the transfer of the suit land to the 1st Defendant for a consideration of KShs. 30 million. The Plaintiff still holds the original certificate of title to date. It complained that when it went to check the Companies Registry it found that its file and that of the 1st Defendant was missing. At the Lands Registry the Title Deed File and Register were missing. The suit was brought for a declaration that it was still the lawful owner of the suit property and sought the cancellation of the entries showing the 1st Defendant as the registered owner, amongst other prayers.

Along with the suit was filed an application for a temporary injunction to restrain the Defendants by themselves, their servants, and or agents from selling, offering for sale, parting with possession, transferring and/or in any other manner interfering with the suit property. A temporary injunction was issued.

The 2nd and 3rd Defendants did not enter appearance or file defence and, on 8th June 2007, an interlocutory judgment was entered against them.

It does appear not disputed that the 1st Defendant has since subdivided the suit land into ten parcels. These include L.R. Nos. 7149/III, 7149/112, 7149/113, 7149/114, 7149/115, 7149/116, 7149/117 and 7149/118. The Defendant has sold or is offering these parcels for sale. It would appear the people he has sold to are engaged in the development of their respective portions. The Plaintiff has applied under Order 40 rule 1 and 2 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act to restrain the 1st Defendant and/or its agents, servants or transferees from selling, offering for sale, disposing off, transferring and/or in any other manner interfering with the suit property. The 1st Defendant did not swear any affidavit in response which means it has indeed subdivided the suit land and is selling the subdivisions to third parties. This is done in the face of this case and orders of injunction or *status quo* made previously. The grounds of opposition filed on 22nd February 2011 do not change this factual position.

It is noted that the 1st Defendant's defence to the suit was that it was an innocent buyer for value without notice of the fraudulent acts by the 2nd and 3rd Defendant.

It is of critical importance that the process of the court be respected by the parties to this suit, more so by the 1st Defendant who is interfering with the suit property that is the subject of competing claims. One does not know which way the case may go, but with the interlocutory judgment on record it would appear that the 2nd and 3rd Defendants had no claim to the suit property when they purported to transfer it to the 1st Defendant. As the Plaintiff and the 1st Defendant challenge each other as to who is entitled to the suit land, let there be no risk to any third party who may want to buy any of the subdivisions. For those who have bought, let there be no risk of losing further monies by engaging in any disposal or further development.

It is quite clear that the court is dealing with property of immense value. I find a basis has been laid by the Plaintiff for the preservation of the suit property. An order is made restraining the 1st Defendant, its agents and/or servants, and transferees, from further dealing with, developing, selling, offering for sale, charging, mortgaging or in any other manner interfering with the suit property or any of its subdivisions including L.R. Nos. 7149/111-118, until this suit is heard and determined. It is further directed that the Plaintiff shall within 30 days apply to join in the suit all those transferees or other persons interested in the suit property. Costs of this application shall be paid by the 1st Defendant.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH 2011

A. O. MUCHELULE

J U D G E