



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO.257 OF 2010**

**MARY WANGARI MWANGI.....PLAINTIFF/APPELLANT**

**VERSUS**

**PETER NGUGI MWANGI T/A**

**MANGU BUILDERS LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**DANIEL KIPLANGAT KIRUI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**DALICE INVESTMENTS LTD.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**COMMISSIONER FOR LANDS.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

The applicant, Mary Wangari Mwangi is seeking in the instant application dated 8<sup>th</sup> October, 2010 that the four (4) respondents be restrained from selling, disposing of, transferring, dealing in or registering any dealings in parcel of land known as L.R. NAIVASHA BLOCK 5/225 pending the hearing and determination of the suit herein.

It is the applicant's case that she is the legal owner of the suit property and is in possession of the original title in the business name of Mangu Builders. It is further averred that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents (Daniel Kiplangat Kirui and Dalice Investments Limited) have fraudulently procured another title deed in respect of the suit property in the name of the 3<sup>rd</sup> respondent. That the respondents are now colluding to sell the suit property to the applicant's detriment. Although the applicant has sworn a 68-paragraphed affidavit, the foregoing summarizes the averments.

The 1<sup>st</sup> respondent, Peter Ngugi Mwangi t/a Mangu Builders, has also deposed 46-paragraphed affidavit in reply the import of which is that the applicant is not and has never been the owner of the suit property; that she has used Mangu Builders, the deponent's business name to obtain the title to the suit property fraudulently; that the applicant has instituted numerous cases against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents claiming ownership of the property; that there have also been criminal cases arising from dealings in the suit property; that the suit herein does not disclose any cause of action against the 1<sup>st</sup> respondent.

The 2<sup>nd</sup> and 3<sup>rd</sup> respondents have similarly sworn a lengthy replying affidavit of 56 paragraphs. In summary they contend that the 2<sup>nd</sup> respondent entrusted the applicant and another by the name Francis Gachanja Mwangi (her brother) who had posed as estate agents with documents relating to the suit land to process the title document. Instead, the two fraudulently caused the property to be registered in the business name of Mangu Builders. On inquiry with the lands offices both in the district and Nairobi, it was revealed that the registration of the applicant as the proprietor of the suit property was fraudulent and based on forged documents; that in its ruling on 28<sup>th</sup> June, 2010, the court determined the questions that

are now being raised in this application.

Having considered the arguments in this dispute and the authorities cited, it must be observed right away that the 1<sup>st</sup> respondent, Peter Ngugi Mwangi and the applicant are brother and sister. The basis of this dispute is the contested ownership of the suit property. Both the applicant and the 3<sup>rd</sup> respondent have documents of title. The title documents held by the applicant is in the name of Mangu Builders. The applicant's contention is that her title is lawful while that of the 3<sup>rd</sup> respondent is a forgery obtained through fraud committed by the other respondents. On that basis, she seeks that they be restrained in the terms set out earlier.

A restraining order of injunction will only issue if the court is satisfied that the applicant has a *prima facie* case and if the applicant may suffer substantial loss not capable of being compensated by an award of damages and should the court be in doubt, it will decide the matter on a balance of convenience. The applicant has exhibited an allotment letter and a certificate of lease in the name of Mangu Builders and explained that she had been advised to use a business name to apply and acquire the property. The business name, Mangu Builders is registered in favour of Peter Ngugi who has categorically disowned the acquisition insisting that it was fraudulent. Both leases held by the 3<sup>rd</sup> respondent and the one in the name of Mangu Builders are issued by the Commissioner of Lands who has declared the latter title as a forgery.

Nakuru HCCC No.272/2009 was allegedly instituted by the 1<sup>st</sup> respondent, a fact he discounted prompting police investigations. He was vindicated by those investigations which concluded that the signatures and writings attributed to him were forgeries. The issues in that suit were similar to those raised in the instant suit. The same documents as those presented in this application were used in the application dated 1<sup>st</sup> October, 2009 by both sides. Although the present applicant was not a party to that suit or application and even though the investigations did not find her culpable, the issues raised in her instant application must suffer the same fate. The allegation of collusion and fraud against the respondents does meet the threshold of a *prima facie* case.

For these reasons, the application fails and is accordingly dismissed with costs.

**Dated, Delivered and Signed at Nakuru this 11<sup>th</sup> day of April, 2011.**

**W. OUKO  
JUDGE**