



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Environmental & Land Case 348 of 2008**

**RIFT VALLEY MACHINERY SERVICES LIMITED ..... PLAINTIFF/RESPONDENT**

VS.

**AGRO COMPLEX (K) LIMITED.....1<sup>ST</sup> DEFENDANT/APPLICANT**  
**WILFRED MINGI WAWERU ..... 2<sup>ND</sup> DEFENDANT/APPLICANT**  
**PETER KIMANI KIMARU..... 3<sup>RD</sup> DEFENDANT/APPLICANT**  
**JANE WAMBUI ..... 4<sup>TH</sup> DEFENDANT/APPLICANT**  
**REGISTRAR OF COMPANIES ..... 5<sup>TH</sup> DEFENDANT/RESPONDENT**  
**PRINCIPAL REGISTRAR OF TITLES .....6<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff on one hand and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants on the other have competing interests on a parcel of land located in Embakasi, Nairobi. From the pleadings, in this record, it is evident that the LR. No. is the same, i.e. 22140, in respect of the same parcel of land but the plaintiff's certificate of title is registered as IR.87860/1 while that of the defendant is IR. No.108022.

It is obvious therefore that it is the same property but covered by two certificates of title. The pleadings also allege several inconsistencies in respect of the allocation and registration of the said parcels of land on the part of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants.

It is the plaintiff's case that there are particulars of fraud on the part of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants associated with malice and backed by negligence, collusion and recklessness and/or malice by the 5<sup>th</sup> defendant. The plaintiff also alleged collusion, negligence, recklessness and/or malice by the 6<sup>th</sup> defendant.

It is sought in the plaint dated 22<sup>nd</sup> July, 2008, orders to the effect that, a declaration be issued that the plaintiff is the true and bona fide owner of the suit property, i.e. LR. 22140 Embakasi in Nairobi, and that the 1<sup>st</sup> defendant has no claim whatsoever upon the said suit property.

There is also an order sought to declare that, the title deed LR. No.22140 bearing IR.108022 allegedly issued to the 1<sup>st</sup> defendant on 30<sup>th</sup> October, 2007 is null and void having been irregularly and fraudulently issued and, an order that, the same be cancelled by the 6<sup>th</sup> defendant.

Based on the foregoing prayers, the plaintiff seeks injunction orders against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants as set out in the prayers therein. In the meantime, an interim injunction is sought to preserve the property until this suit is heard and determined.

All defendants herein filed a reply to the application and counsel have filed submissions thereto. Most of the observations made by counsel in their respective submissions relate to issues that shall be decided during the hearing of the main suit where evidence is yet to be adduced. At this point, I only have affidavit evidence that has not been tested under cross examination. It is clear to me that, the best order that commends itself at this stage is to preserve the subject matter. In that regard therefore, I order that, both the plaintiff and the defendants shall preserve the subject matter pending the hearing of the main suit.

The impact of this order is that, both parties shall not deal with the subject matter to the detriment of the other. As there is a risk of alienation, the order shall apply in equal measure to both parties and the same shall be registered against the title until the final orders of this court. The costs shall be in the cause.

Orders accordingly.

*Dated, signed and delivered at Nairobi this 27<sup>th</sup> day of January, 2010.*

**A. MBOGHOLI MSAGHA**  
**JUDGE**