



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**Civil Case 352 of 2008**

**FANUEL OOKO RARINGO.....PLAINTIFF/APPLICANT  
VERSUS  
GUYO SARR HUKA.....1<sup>ST</sup> DEFENDANT/RESPONDENT  
COMM. OF LANDS.....2<sup>ND</sup> DEFENDANT/RESPONDENT  
THE A.G.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

The applicant has brought a suit against the respondents for a declaration that plot No.Nakuru Municipality Block 15/662 (the suit property) belongs to him and a further declaration that the title to the suit property issued to the 1<sup>st</sup> respondent is null and void and should be cancelled.

The applicant also seeks an order of permanent injunction against the 1<sup>st</sup> respondent restraining him from alienating, wasting or in any way dealing with the suit property. Simultaneously filed with the suit is chamber summons in which only one prayer is sought pending the determination of the application. The prayer states:

**“2). THAT pending the hearing and determination of this application *interpartes*, the 1<sup>st</sup>Defendant/**

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**Respondent either by himself, his servant and/or agents be restrained from constructing any permanent building and or structures or in any other way interfering with the plaintiff/applicant’s plot No.NKU/MUN. BLOCK 15/662”**

I will turn to this prayer shortly. It is the applicant’s contention that he is the registered proprietor of the suit property and that the 1<sup>st</sup> respondent has, through collusion with the other two respondents fraudulently obtained registration of the suit property. The 1<sup>st</sup> respondent has denied these allegations and has counter claimed for a declaration that he is the lawful owner of the suit property and further that the lease certificate issued to the applicant in respect of the suit property is null and void.

In his replying affidavit, the 1<sup>st</sup> respondent avers that he purchased the suit property for valuable consideration from one **Zakayo Kariuki** after conducting a search. Thereafter the suit property was transferred to him and Certificate of Lease issued to him. He then embarked on construction of a house which is complete. He has also deposed that the applicant has never occupied the suit property. The other two respondents have not responded to this application

I have considered the foregoing averments as well as annexures in support of each party’s case. Being an

application for a  
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temporary injunction, the consideration is whether the applicant has demonstrated a *prima facie* case with a probability of success; whether the applicant will suffer irreparable injury not capable of being compensated by an award of damages. When the court is in doubt it will decide the matter on the balance of convenience. See **Giella Vs. Cassman Brown & Co. Ltd.** (1973) E.A. 358.

First and foremost, the purpose of a temporary injunction is to preserve the subject matter of the dispute pending the final determination of the dispute. I have at the beginning of this ruling set out the prayer sought by the applicant. It is to the effect that the 1<sup>st</sup> respondent be restrained from constructing any permanent building or structure on the suit premises – or in any way interfering with the suit property. The first limb of that prayer is not available as the 1<sup>st</sup> respondent has asserted without being contradicted by the applicant that the construction of a building at the suit property is complete. An order to stop the 1<sup>st</sup> respondent from construction of a building will therefore be in vain. On whether there is a *prima facie* case, it is noted that both the 1<sup>st</sup> respondent and the applicant claim ownership of the suit property. The latter has deposed that on 31<sup>st</sup> May, 1996, the 2<sup>nd</sup> respondent allocated the suit property to him and has been paying the rates and rents. He was issued with a Certificate of Lease on 29<sup>th</sup> August, 2008 as the first registered proprietor. The

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former on his part has maintained that he purchased the suit property from one **Zakayo Kariuki** by a written agreement in the year 2006. He has annexed a copy of the agreement, a copy of the official search showing that prior to the transfer to him the suit property was registered in the name of **Zakayo Kariuki**. There is also a copy of a transfer of lease in favour of the 1<sup>st</sup> respondent by **Zakayo Kariuki**. Finally a copy of the Green Card shows that the suit property was originally registered in the name of **Zakayo Kariuki** in 2005 before it was transferred to the 1<sup>st</sup> respondent and a lease certificate issued on 3<sup>rd</sup> July, 2006. It is noted, however, that a copy of that lease certificate is not annexed. What is apparent in this matter is that the suit property is registered in favour of two persons, the applicant and the 1<sup>st</sup> respondent. At this stage, the court is not expected to make any definite findings as to the actual owner of the suit property. With each party claiming ownership, the court will decide the application on a balance of convenience. The 1<sup>st</sup> respondent is in actual possession of the suit land on which he has put up a permanent building. The balance of convenience is to maintain *status quo* as of the date of this ruling pending the hearing and determination of the suit.

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To that extent, the application succeeds and I make no orders as to costs.

**Dated, Signed and Delivered at Nakuru this 18<sup>th</sup> day of January, 2010.**

**W. OUKO**  
**JUDGE**