



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.109 OF 2011

CHARLES MBINDO.....1ST PLAINTIFF
JANE WANJIRU WAMWANGI.....2ND PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI.....1ST DEFENDANT
JULIUS MUTUGI MUCHEMI.....2ND DEFENDANT

R U L I N G

1. By a chamber summons dated 21st January, 2011, Charles, Mbindo and Jane Wanjiru Wamwangi (hereinafter referred to as the 1st and 2nd plaintiffs respectively), seek inter alia an order that the defendants either by themselves, agents, servants, employees, and/or others be jointly and severally restrained from alienating, constructing and/or interfering in any other way with Plot No.B12-Umoja Innercore Sector III (hereinafter referred to as the suit property), pending the hearing and determination of this suit, and that costs be provided for.
2. The application is based on the grounds that: the plaintiffs legally purchased the suit property from the 2nd defendant; the plaintiffs are the lawful proprietors of the suit property; the defendants have colluded and or connived to defeat the rights of the plaintiffs by illegally transferring the same to a 3rd party and construction is taking place on the suit property.
3. The application is further supported by an affidavit sworn by the 1st plaintiff. Annexed to the affidavit is an agreement entered into between the 2nd defendant and the plaintiffs, in which the 2nd defendant agreed to sell the suit property to the plaintiffs at a consideration of Kshs.1 million which amount was duly acknowledged. The plaintiff is now alarmed that there is some construction in progress in the suit property by some unknown persons. The plaintiffs maintain that unless the orders sought are granted, they will suffer irreparable loss.
4. In a replying affidavit sworn on 13th May, 2011, J.W. Ndonga, the director of Housing development Department of the 1st defendant, has denied that the 1st defendant is interfering with the plaintiffs' suit property or has in any way encroached on it.
5. Although duly served with the application, the 2nd defendant did not file any response to the application or attend court for the hearing of the application.

6. I have carefully considered this application. Although the plaintiff has produced an agreement showing that the 2nd defendant agreed to sell the suit property to him, nothing has been produced before me to show that the defendants have colluded or are conniving to defeat the rights of the plaintiff by illegally transferring the suit property to a 3rd party. There is no evidence that the suit property is in the process of being transferred to any person other than the plaintiffs. As regards the alleged construction, at paragraph 5 of his supporting affidavit, the 1st plaintiff has deponed that they visited the suit property and found some construction in progress by some unknown persons. Therefore, the plaintiffs have not connected either the 1st defendant or the 2nd defendant with the ongoing construction. In the circumstances, the plaintiffs have not established any *prima facie* case against any of the defendants upon which an order of interlocutory injunction can be anchored. The application dated 24th March, 2011 therefore fails and is accordingly dismissed.

Dated and delivered this 9th day of June, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Kimani Kiragu H/B for Muli for the plaintiffs/applicants
Advocate for the defendants/respondents absent
B. Kosgei - Court clerk