



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.436 OF 2010

SOMERSET AFRICA LTD.....1ST PLAINTIFF
YUKEN MILLS LIMITED.....2ND PLAINTIFF
VERSUS
CECILIA WAMAITHA MWANGI.....1ST DEFENDANT
JUSTUS WAINAINA NJUGUNA.....2ND DEFENDANT
THE COMMISSIONER OF LANDS.....3RD DEFENDANT
THE CHIEF LAND REGISTRAR.....4TH DEFENDANT
THE HON. ATTORNEY GENERAL.....5TH DEFENDANT

R U L I N G

1. Somerset Africa Ltd who is the 1st plaintiff claims to be the registered proprietor of Land Parcel No.4953/72/IX Thika Municipality, while Yuken Mills Limited who is the 2nd plaintiff claims to be the registered owner and proprietor of land parcels No.4953/IX/73 and 4953/74/IX situated within Thika Municipality. Mr. Horatius Da Gama Rose, a director of the two companies has sworn an affidavit to which he has annexed certificates issued to the plaintiffs under the Registration of Titles Act.
2. The plaintiffs claim that they have now discovered that the 3rd and 4th defendants changed the registration system and issued new registration numbers in respect of the properties, having the suit properties reregistered under the Registered Land Act Cap 300. New titles being LR No.Thika Municipality/Block/IX/283, LR No.Thika Municipality/Block/IX/284 and LR No. Thika Municipality/Block/ IX/ 285. It is contended that the new titles were, without any color of right and with fraudulent intentions, issued in the names of Cecilia Wamaitha Mwangi and Justus Wainaina Njuguna, who are the 1st and 2nd defendants. This was done without the consent or knowledge of the plaintiffs. The plaintiffs maintain that the issuance of the titles to the 1st and 2nd defendants is irregular, illegal, fraudulent, unprocedural and unjustifiable.
3. The plaintiffs have therefore filed the present suit seeking inter alia, a declaration that they are the bona fide proprietors of the said properties, and the cancellation from all land registers and records of the names of 1st and 2nd defendants. The plaintiffs now seek an order of interlocutory injunction restraining the 1st and 2nd defendants from dealing with the suit property pending the hearing and determination of the plaintiffs' suit.
4. The 1st and 2nd defendants were duly served through substituted service. They have however not entered any appearance nor have they filed any response to the plaintiffs' application. The Attorney General who appeared on behalf of the Commissioner of Lands and the Chief Land Registrar, who are the 3rd and 4th defendants, did not object to the plaintiffs' application.
5. I have carefully considered this application. On the facts given, I am satisfied that the plaintiff has established a prima facie case with a probability of success. Moreover, the application has not been opposed. In the circumstances I allow the plaintiffs' application dated 20th September, 2010 and issue orders of interlocutory injunction as prayed in paragraph 3 of the application. Costs of the application shall be in the cause.

Dated and delivered this 10th day of November, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Nyaanga for the plaintiffs
Advocates for the defendants absent
B. Kosgei - Court clerk