



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 151 of 2009**

**ALICE KIMETO .....PLAINTIFF/APPLICANT**

**VERSUS**

**MARGARET NYAGUTHII NGARI.....1<sup>ST</sup> DEFENDANT/1<sup>ST</sup> RESPONDENT**

**GILBERT JOHNSON KIBUIKA KAMAU.....2<sup>ND</sup> DEFENDANT/1<sup>ST</sup> RESPONDENT**

**RULING**

1. By the Chamber Summons application dated 1/04/2009, brought under Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, the Plaintiff/Applicant, Alice Kimeto seeks orders of injunction restraining the Defendants whether by themselves, their servants and or agents from alienating, transferring, trespassing or in any other way interfering with the Plaintiff's quiet possession of Title No. Nairobi Block 116/1284 pending the hearing and determination of this application and or suit. The Applicant has sought an order of the court granting her leave to serve both the application and summons to Enter Appearance by way of advertisement once in the **NATION** newspaper. She also prayed for costs.
2. The application is based on the ground that the Plaintiff is the beneficial owner of parcel of land Title No. Nairobi block 116/1284 (the suit property); that the Defendants have perpetuated frauds and that unless restrained by an order of this Honourable Court the Plaintiff is likely to suffer irreparable loss. The application is also supported by the Supporting Affidavit sworn by Alice c. Kimeto on 1/04/2009. She alleges that she purchased the suit property from one Rebecca Kamoing who was previously a fully paid up shareholder in M/s New Roysambu Housing Company Limited. The Plaintiff avers that both Rebecca Kamoing and herself have paid certain amounts of money towards the preparation and issuance of the title deed in respect of the suit property. Payment receipts for those amounts are part of the pleadings herein. The Plaintiff alleges that the transfer of the suit property to the 1<sup>st</sup> Defendant was fraudulent as per the particulars of fraud set out in paragraph 10 of the plaint dated 1/04/2009 and filed simultaneously with this application on 6/04/2009.
3. The application is opposed by the Defendants through the Replying Affidavit sworn by Gilbert Johnson Kibuika Kamau on 24/10/2009. The deponent avers therein that he purchased the suit property from the 1<sup>st</sup> Defendant Margaet Nyaguthii Ngari on or about 14/12/2004 and was subsequently issued with a Certificate of Lease. There is one Certificate of Lease dated 6/10/2003 issued in favour of Rebecca Kamoing of ID Number 3341608. The Lease is shown to have been registered on 28<sup>th</sup> day of October (sic) 2003 and was drawn by Caleb T. Muhuyi Land Registrar, P.O. Box 30089, NAIROBI.

4. There is also annexed to the same Replying Affidavit a Transfer of Lease Form dated 14/12/2004 from Margaret Nyaguthii Ngari in consideration of Five Hundred Thousand only (Kshs.500,000/=) to Gilbert Johnson Kibuika Kamau of Box 9676 Nairobi. On the 12/01/2005, the 2<sup>nd</sup> Defendant/deponent was issued with a Certificate of Lease in respect of the suit property which measures 0.0370 Ha. The proprietorship section of the Certificate of Lease starts at entry No. 5 dated 12/01/2005 in favour of the 2<sup>nd</sup> Defendant herein Gilbert Johnson Kibuika Kamau. The Plaintiff avers that the transfer of the suit property from Rebecca Kamoing to the 1<sup>st</sup> Defendant, whose identity the Plaintiff says remains mysterious was fraudulent.
5. At the hearing of the application on 14/10/2009, Mr. Nthuku for the Plaintiff submitted that the transfer of the suit property from Rebecca Kamoing to the 1<sup>st</sup> Defendant (if any) was fraudulent and that the ID given as that of Rebecca Kamoing is not the correct one. Rebecca's ID in the transfer of Lease purportedly from herself to 1<sup>st</sup> Defendant is given as ID No. 3341608 while the ID No. given in the Sale Agreement executed between Rebecca C. Kamoing and the Plaintiff is 5176925. Mr. Nthuku submitted that the 1<sup>st</sup> Defendant had no property to pass on to the 2<sup>nd</sup> Defendant. He asked the court to Grant the orders of injunction.
6. Mr. Mugambi for the 2<sup>nd</sup> Defendant submitted that there is no cogent evidence by the Plaintiff to show that the Plaintiff bought the suit property on the dates she alleges she did, and more so in the absence of necessary consents and clearances to show that the Plaintiff paid any monies to the relevant authorities before the transfer of lease was effected into her name. Mr. Mugambi submitted further that the 2<sup>nd</sup> Defendant had shown through documentary evidence including a copy of the original lease, Instrument of Transfer and Certificate of Lease issued to the 2<sup>nd</sup> Defendant, that the suit property is registered in the name of the 2<sup>nd</sup> Defendant and therefore belongs to him. Mr. Mugambi submitted that in the absence of any allegations of forgery, the court should refuse and dismiss the Plaintiff's application with costs to the 2<sup>nd</sup> Defendant. Mr. Mugambi also submitted that if the court is in doubt, it should order maintenance of the status quo pending the hearing and determination of the suit.
7. I have considered the rival views in the matter. What comes out of the pleadings and the submissions is that there are gaps in the process that led to the issuance of the Certificate of Lease in favour of the 2<sup>nd</sup> Defendant herein. I have seen the receipts issued to the Plaintiff herein both by the Department of Lands and Maosa & Company Advocates in respect of the suit property. On the basis of the above, I am satisfied that an order of injunction is merited in this case pending the hearing and determination of the suit. I therefore allow the Plaintiff's application dated 1/04/2009 and order that the exparte injunction issued herein on 6/04/2009 be and is hereby confirmed and shall remain in force pending the hearing and determination of this suit or until further orders of this court. The Plaintiff/Applicant shall have the costs of this application.
8. As I conclude this ruling, it has become apparent to the court that the Commissioner of Lands is a necessary party to these proceedings. The Plaintiff should therefore take steps to bring on board the Commissioner of Lands as a Defendant in this case. The court is of the view that the participation of the Commissioner of Lands in this matter will assist in filling the glaring gaps in the process by which the title to the suit property ended up being registered in the name of the 2<sup>nd</sup> Defendant.

It is so ordered.

**Dated and delivered at Nairobi this 16<sup>th</sup> day of November, 2009.**

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:

Miss Nthuku (present) for the Plaintiff/Applicant

No appearance For the 2<sup>nd</sup> Defendant/Respondent

Weche – court clerk