



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

Civil Suit 66 of 2004

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MERESIA AKEYO OBARA.....PLAINTIFF

VERSUS

HARAMBEE CO-OPERATIVE

SAVINGS & CREDIT SOCIETY.....1ST DEFENDANT

MILD STEEL ENGINEERING WORKS LTD..... 2ND DEFENDANT

METLITUS OLUOCH3RD DEFENDANT

RULING

I. BACKGROUND

1. The application of 16th August of 2004 and filed on the 15th April 2005 seeks orders of injunction namely:-

“That the defendants have either by themselves, agents or servants be restrained from transferring, changing, alienating developing or in any other manner howsoever interfering with the property comprised in Title No. 5 Nairobi Block 82/4915 and Nairobi Block 82/4918 pending the hearing and determination of this suit.

2) _____

3) _____”

2. Meresia Akeyo Obara had purchased the two mentioned plot for a sum of Ksh. 400,000/- from the deceased one Nashon Otieno Wanjir. He was a member of Harambee Co-operative Savings and Credit Society the head owner of the said land for a sum of about Ksh. 200,000/=. Nashon passed away. When the plaintiff Meresia claimed the piece of land she found that the 1st Defendant the Co-operative Savings and Credit Society had transferred the land to the 2nd and 3rd defendant’s M/s Mild Steel Agency & Metlitus Oluoch.

3. The plaintiff prayed for an injunction. She filed suit on 28th January 2004.

II. IN REPLY

4. In reply by the respondents, they stated that there has been no prima facie case made out to warrant the said injunction to issue.

III. OPINION

5. The deceased Nashon Otieno Wanjir was the legal owner of the said plot in question. It appears that in 1995 he sold these plots to 3rd parties long before he then entered with a sale agreement with the plaintiff. The agreement with the plaintiff was in 1996. The 1st defendant transferred land to the first party who was sold the land.

6. The plaintiff alleges negligent and fraud in the handling of the sale agreement. That this injunction ought to issue against the respondents.

7. In this matter before court the case against Mild Steel Agency is clear but not of the 3rd defendant Metlitis Oluoch.

8. I would find that no prima facie case has been made out against the 1st and 2nd defendants. Land has already been transferred according to the respondent. The matter lies in the aspect of damages and not an injunction.

9. I would accordingly dismiss this application with costs to the respondents.

10. That no injunction is to issue against the respondents but a claim for damages may be made. There may be need to enjoin the 3rd party being the deceased estate to this suit.

DATED THIS 13TH DAY OF MARCH 2008 AT NAIROBI.

M. A. ANG'AWA

JUDGE

P. Okumu of M/s Amuga & Co. Advocates for the plaintiff/applicant – present

P.M. Chege for Chege & Co. Advocates for the 1st defendant/respondent-present

S.K. Muendo of S.K. Muendo & Co. Advocates for the 2nd and 3rd defendant/respondents - present