



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 185 of 2006**

1. Land & Environmental Law Division
2. Subject of Main suit Land
  - a. Premises LR 36/500/VII Eastleigh Original 47/7
  - b. Original orders of suit premises deceased
  - c. Succession Cause 1728/00 complete. Property being administered by plaintiff 1 & 2 jointly
  - d. Property still in name of deceased and not transferred to beneficiary
  - e. Defendant 1 & 2 claim to have purchased property
    - i. Filed HCCC 407/04 per specific performance against alleged seller of property.
    - ii. Transferred sellers of property were not the owners as owners died.
      - f. Plaintiffs 1 and 2 file present suit to declare sale of property illegal null and void.
      - g. Defendant counter claim and enjoins eight defendants including Advocate of High Court of Kenya
      - h. btained 1.6 million deposit not paid back.
      - i. Defendant 1 and 2 lodge caveat
      - j. Application 27 February 2006 to withdraw caveat by applicant
      - k. Application of 14 March 2006 for injunction
      - l. That status quo be maintained. No transaction of sale letting of premises.
3. The 7<sup>th</sup> defendant not represented and duly admitted by the defendants' advocates as the same was an error. Really represent 1 – 8 defendants.
4. Held

Injunction to issue.

5. Case Law - Nil
6. Advocate

F. Wamalwa for F.N. Wamalwa & Co. Advocates for the plaintiff

Ndumu Kimani for Ndumu Kimani & Co. Advocates for the 1<sup>st</sup> defendant – absent

D.K. Musyoka for Musyoka & Co. Advocates for the 2<sup>nd</sup> defendant

**PRISCA WANJIKU KIMANGA**

**STEPHEN MAINA KIMANGA .....PLAINTIFFS**

**VERSUS**

**MUSA SHARIFF AHMED**

**MOHAMMED AMIN.....DEFENDANTS**

**RULING**

**I. Injunction**

1. By an application dated 14<sup>th</sup> March 2006, the Original Defendant Musa Shariff Ahmed and Mohammed Amin in this suit and who are also the plaintiffs in the counter claim apply to this court for an injunction to restrain the defendants in the counter-claim from selling transferring letting LR 36/500/VII to the 8<sup>th</sup> defendant Abdirahaman Sheikh Mohammed. That the suit property should not be assigned, sold, let, advertised and or developed till the hearing and determination of the counter-claim.

**II. Background**

2. From the proceedings before this court, a brief background of this matter is as follows: - the suit premises LR 36/500/VII is situated in the Eastleigh area of Nairobi. It is owned and is still registered in the name of Mwangi Kimanga and Mwangi Githure. These two gentlemen passed away in 17 November 1999 and in 1970 respectively.

3. Letters of grant intestate were duly confirmed and issued to the administration of the Mwangi Kimange by the High Court of Kenya at Nairobi (Kihara Kariuki 10 December 2004) (court vacation). The specific property herein was to be shared equally between the following:-

- i) Paul Kimani Mwangi
- ii) Patrick Githinji Mwangi and
- iii) Jackson Michoki Mwangi

4. The property remained in the name of the deceased and was administered by two original plaintiff administrators. The two attempted to rent out the premises to one Abdirahaman Sheikh Mohammed (8<sup>th</sup> defendant in the counter claim) when it was alleged that the two original defendants were in effect owners of the suit premises.

5. The two defendants had filed an earlier suit being HCC 407/04 in which they claim to have entered into a sale agreement with one Mwangi Kimanga. But the said Mwangi Kimanga was in effect dead. They dealt with Patrick Githinji Mwangi (defendant No. 7 in the counter claim and beneficiary Number 2 in the succession cause). The said Patrick Githinji Mwangi did not disclose he was NOT – Mwangi Kimanga. That he sold his share of the said suit premises to the defendant a sum of ksh.1.6million deposit was paid to an advocate Daniel Ndungu which deposit is still held by him. He is sued as the 10<sup>th</sup> defendant in the counter-claim.

6. The two defendants (Original) lodged a caveat against the title. The two administrators/plaintiff original claimed the sale agreement was a forgery. The agreement had been entered by a person who had already died. The matters had subsequently been reported to the police and it is under investigations.

7. An application dated 27 March 2006 was withdrawn attempting to remove the caveat lodged by the two defendants.

8. The two defendants filed the application of 14 March 2007 seeking injunction orders restraining the plaintiffs original from parting with the suit premises, letting the same and or selling (as described above)

III: Application dated 14.3.2007 for an injunction

9. The two defendants entered into an agreement of sale. They had paid deposit for the same to the 10<sup>th</sup> defendant and an advocate to the sellers. They failed to deliver the premises and a suit for specific performance was filed in 2004. Two years later, in 2006, the administrators filed this suit to convince the court that the sale agreement was a forgery/ fraud. That they he agree is proceedings let the premises to the 8 defendant in the counter claim.

10 I quite understand the original plaintiffs concerns nonetheless herein that would cause irreparable loss and damages to the applicants original defendants.

11. Peter Githinji Mwangi Kanye is alleged to be involved and instrumental in the sale. He denies this through his advocate. The said advocate admits he inadvertently failed to come on record for him as the 7<sup>th</sup> defendant. He also failed to enter appearance for the 8<sup>th</sup> defendant.

12. The allegations herein are serious. I hereby find that this case warrants for an injunction to be issued as prayed in the application of 14<sup>th</sup> March 2006 till the determination of this suit. I order all related suits filled be brought before this court at date of hearing. I award the costs to the defendants/applicants/plaintiff in the counter claim to be paid by the defendants on the counter claim.

Dated this 27<sup>th</sup> day of July 2007 at Nairobi.

M A ANG'AWA

JUDGE

F. Wamalwa for F.N. Wamalwa & Co. Advocates for the plaintiff

Ndumu Kimani for Ndumu Kimani & Co. Advocates for the 1<sup>st</sup> defendant – absent

D.K. Musyoka for Musyoka & Co. Advocates for the 2<sup>nd</sup> defendant