



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 37 OF 2020**

**PHYLIS JEROTICH MUTWOL.....PLAINTIFF**

**VERSUS**

**EMMY JEPKEMOI MUTWOL.....1<sup>ST</sup> DEFENDANT**

**AGRICULTURAL FINANCE CORPORATION.....2<sup>ND</sup> DEFENDANT**

**COUNTY LAND REGISTRAR, TRANS-NZOIA COUNTY.....3<sup>RD</sup> DEFENDANT**

**AND**

**SARAH CHEPTENGENY BUSIENEL.....INTERESTED PARTY**

**RULING**

**The Application**

1. By a notice of motion dated 24/6/2020 and filed on the 29/6/2020 brought under Articles 19, 22, 23, 40, 45(1), 46, 47, 48, 50(1) and 159 of the Constitution, Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Chapter 21 of the Laws of Kenya, Order 40 Rules 1 and 4 and Order 51 Rule 1 of the Civil Procedure Rules, the 1<sup>st</sup> and plaintiff/applicant seeks the following orders:

1. ...spent

2. ...spent

3. The defendants/respondents either jointly or severally be restrained from selling, transferring, leasing out, charging, subdividing or in any other way dealing with the subject parcel of land being Title No. Chepsiro/Kibuswa Block 1/Kelchinet/137 pending hearing and determination of the instant main suit.

4. In the event the 2<sup>nd</sup> defendant/respondent has no more interest on the subject parcel of land, the original title deed be deposited with the honourable court for safe custody.

5. The Directorate of Criminal Investigation to conduct an investigation on the transfer and issuance of the title deed in the name of the 1<sup>st</sup> defendant/respondent to establish whether there was fraud and forgery and file a report before this honourable court before the hearing within 30 days.

6. Costs of the application be awarded to the plaintiff/applicant.

2. The application is supported by the sworn affidavit of the plaintiff and also premised on the grounds summarized at the foot of the application.

3. The plaintiff filed further affidavit sworn on 22/9/2020.

**The Response**

4. The 1<sup>st</sup> defendant filed replying affidavit sworn on **14/7/2020**.

5. In reply to affidavits by the plaintiff and Alice Mutenyo Wabala the 1<sup>st</sup> defendant filed a further affidavit sworn on **25/9/2020**.

#### **Submissions**

6. The application was disposed of by way of written submissions. The 1<sup>st</sup> defendant filed her submissions on **30/11/2020**. The plaintiff filed her submissions on **19/1/2021**.

#### **Determination**

7. I have considered the application and the response and the submissions. The issues that arise for determination in the instant application are as follows:

**1. Whether an injunction should issue.**

**2. Whether the title document should be submitted to court for safe custody.**

**3. Whether the Director of Criminal Investigations should be ordered to conduct an investigation into the transfer and issuance of title deed in the name of the 1<sup>st</sup> defendant to establish if there was forgery and fraud and file a report before this court.**

8. The issues are addressed as hereunder:

**(1) Whether an injunction should issue;**

9. In the circumstances of this case which is quite full of controversy it is the opinion of this court that the *status quo* regarding the suit land should be maintained so as to preserve the subject matter of the suit till the end of this litigation.

**(2) Whether the title document should be submitted to court for safe custody;**

10. In respect of this issue I find that it would not be necessary for this court to order that the title document to be submitted to the custody of the court while the holder thereof would still require the same to prove their case before this court in default of which their case may fail. The further reason for declining this order is that this court is in favour of granting an order of *status quo* as per **Issue No. 1** above.

**(3) Whether the director of criminal investigations should be ordered to conduct an investigation into the transfer and issuance of title deed in the name of the 1<sup>st</sup> defendant to establish if there was forgery and fraud and file a report before this court.**

11. On this last issue, I find it unnecessary to order the Director of Criminal Investigations to make the requested investigations. The applicant may be at liberty to report her complaint to the Director who is obliged to accord the matter the attention it deserves and investigate it and proffer the necessary recommendations to the Director of Public Prosecutions on whether to prosecute any person. The court should not direct the Director at this point on how to conduct his duties but it is the hope of the court that upon approaching the Director's office, the plaintiff will obtain service as a citizen as required by statutes and the Constitution. Therefore this prayer is declined.

12. Consequently I grant **only Prayer No. (3)** of the application dated **24/6/2020**. The costs of the application shall be in the cause.

It is so ordered.

**Dated, signed and delivered at Kitale via electronic mail on this 26<sup>th</sup> day of January, 2021.**

**MWANGI NJORGE**

**JUDGE, ELC, KITALE**