



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 44 OF 2018 (O.S)**

**CHARLES MUNENE GATIMU .....APPLICANT**

**VERSUS**

**HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> RESPONDENT**

**PHILIP KIPTAA.....3<sup>RD</sup> RESPONDENT**

**MACDONALD LIJOODI.....4<sup>TH</sup> RESPONDENT**

**ROBINSON PETER NGIGEH .....5<sup>TH</sup> RESPONDENT**

**LUKE METTO .....6<sup>TH</sup> RESPONDENT**

**AND**

**GHANSHYAM MANJI VEKARIYA.....1<sup>ST</sup> INTERESTED PARTY**

**CHANDRAKANT MANJI VEKARIYA....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. In the Notice of Motion dated 15<sup>th</sup> March, 2018, the Applicant is seeking for the following orders:

***a. Pending the hearing and determination of this suit, an order of inhibition be and is hereby issued by this court inhibiting dealing with parcel of land No. 2358/8- Machakos.***

***b. Pending the hearing and determination of this Application inter-partes the court be pleased to grant a temporary injunction restraining the 3<sup>rd</sup> to 6<sup>th</sup> Defendants/Respondents whether by themselves, agents and or assigns thereof from dealing with parcel of land No. 2358/8 -Machakos.***

2. In his Affidavit, the Applicant deponed as follows: that on 20<sup>th</sup> February, 1999, he was allocated L.R. No. 2358/8-Machakos by the then Commissioner of Lands; that on 10<sup>th</sup> March, 1999, he communicated his acceptance of the offer and that he paid all the requisite monies as per the Letter of Allotment by the 1<sup>st</sup> Respondent. The Applicant deponed that he has been following the progress of issuance of the Certificate of Title in his favour and that he later learnt that the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants had been registered as the proprietors of the land.

3. The Plaintiff lastly deponed that he has a legitimate expectation to be registered as the proprietor of the land and that the Defendants were registered as the proprietors of the land without following the due process and through a corrupt scheme.

4. In response, the 3<sup>rd</sup> Respondent deponed that the suit herein has been overtaken by events; that by the time the suit was filed, the suit land had already been transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties and that the 3<sup>rd</sup>-6<sup>th</sup> Respondents were allotted land reference number 2358/8 by the then Commissioner of Lands.

5. According to the 3<sup>rd</sup> Respondent, the Respondents paid the requisite fees for processing of the title document; the fees for land rent and that they were eventually issued with a title document.

6. The 3<sup>rd</sup> Respondent finally deponed that the Applicant has not disclosed how the Respondents were involved in fraudulent activities in the processing of the title for L.R. No. 2358/8 and that the title for L.R No. 2358/8 was issued after following due process.

7. The Interested Parties deponed that they purchased the suit land from the 3<sup>rd</sup>-6<sup>th</sup> Respondents for Kshs. 20 million; that before execution of the Sale Agreement, their advocate carried out due diligence and that the suit land was transferred to them after they paid the requisite land rates, stamp duty and Capital Gain Tax.

8. It is the Interested Parties' case that they are the *bona fide* purchasers of the suit land for value without notice of fraud or other impropriety; that they hold an indefeasible Certificate of Title and that the Application should be dismissed with costs.

9. In his submissions, the Applicant's advocate submitted that the suit raises serious issues touching on the process of allotment and ownership of the suit land; that the Applicant has filed documents relating to the ownership of the suit land and that the substratum of the Application will be lost if the suit land is alienated further.

10. The Respondents' advocate submitted it is the Applicant's duty to prove fraud on the part of the Respondents and that having been issued with a title document, the Respondents became the lawful *bona fide* title holders of L.R. No. 2358/8 and enjoyed the protection to property under Article 40 of the Constitution. The Interested Parties' advocate did not file submissions in respect to the Application dated 15<sup>th</sup> March, 2018. Instead, he filed submissions in respect to the Originating Summons which I shall not consider.

11. The Applicant's case is that he was allocated land known as L.R. No. 2358/8-Machakos by the Ministry of Lands vide a letter of allotment dated 20<sup>th</sup> February, 1999 which he exhibited. The Applicant also exhibited the letter dated 10<sup>th</sup> March, 1999 in which he informed the Commissioner of Lands of his acceptance of the offer and the receipts showing the payments he made to the Ministry of Lands for the suit land.

12. The 3<sup>rd</sup>-6<sup>th</sup> Respondents also produced a letter of allotment dated 20<sup>th</sup> February, 1999, which date is similar to the letter of allotment that the Plaintiff claims was issued to him, including the reference number. Indeed, the person who purportedly signed the two letters of allotment is the same.

13. Just like the Plaintiff, the 3<sup>rd</sup>-6<sup>th</sup> Respondents also accepted the government's offer by paying the charges of Kshs. 148,000 for the land. However, the Respondents made their payments on 6<sup>th</sup> February, 2015 while the Applicant paid on 9<sup>th</sup> September, 2011.

14. The evidence before me shows that one of the letters of allotment issued to the Plaintiff and the 3<sup>rd</sup>-6<sup>th</sup> Respondents is a forgery. However, the issue of which letter of allotment is a forgery can only be determined after trial. Considering that the Plaintiff has documents showing that he paid for the said land way before the Respondents paid for the same land and processed a title, I find that the Applicant has a prima facie case with chances of success.

15. It does not matter that the suit land has since been transferred to the Interested Parties. Indeed, once the issue of proprietorship of the suit land between the Applicant and the 3<sup>rd</sup>-6<sup>th</sup> Respondents is known, the fate of the title that is being held by the Interested Parties will be determined on that basis. I say so because it is trite that the protection of a title under Article 40 of the Constitution is subject to the proprietary or legality of the title in question.

16. Considering that the Applicant has established a prima facie case with chances of success, and the fact that he is likely to suffer irreparable injury that cannot be compensated by way of damages if the order of injunction is not granted, I shall order for the preservation of the suit land by allowing the Application.

17. For those reasons, I allow the Notice of Motion dated 15<sup>th</sup> March, 2018 as follows:

***a. Pending the hearing and determination of this suit, an order of inhibition be and is hereby issued by this court inhibiting dealing with parcel of land No. 2358/8- Machakos.***

***b. Each party to bear his own costs.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 5<sup>TH</sup> DAY OF JULY, 2019.**

**O.A. ANGOTE**

**JUDGE**