



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAROK**

**ELC CASE NO. 10 OF 2020**

**NAATARSIM OLE KOISIKIR.....PLAINTIFF/APPLICANT**

**VERSUS**

**JAMES OCHEGO ONDUSO.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**GEOFFREY MATONDA ANGWENYI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**SUSAN SIAMANTA MWANIKI).....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**JOSEPH SARIMA CHACHA.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**MARY WEGESA SARIMA.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**THE DISTRICT LAND REGISTRAR NAROK.....6<sup>TH</sup> DEFENDANT/RESPONDENT**

**THE HON. ATTORNEY GENERAL.....7<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

By a Notice of Motion dated 5/5/2020 the applicant sought for the following orders

- 1) Spent
- 2) Spend
- 3) Spend
- 4) Spend
- 5) An order for stay of proceeding in Narok CMCC ELC No. 30 of 2020 pending the final determination of the suit herein.
- 6) That the cost of the application be provided for.

The applications is based on the ground that the applicant is the legal and absolute owner of land parcel **CIS-Mara/1/Mashariani Morijo/4077** which the applicant has been in possession but that sometimes in 2018 the 1<sup>st</sup> defendant respondent fraudulently and lawfully acquired a certificate of title for the suit parcel and late irregularly and illegally colluded with the 6<sup>th</sup> respondent registered and subdivided the same resulting in title number **Cis-Mara/Mashariani Morijo/1516,5917,5918 and 5919** registered in the name of 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents. It is the applicant's contention that the said illegal transfer were orchestrated by his advocate who claimed owned the suit land as his legal fees.

The application was further supported by affidavit of the applicant in which he deponed that he had approached the 1<sup>st</sup> respondent sometimes in 2018 to act for him wherein he paid the sum of Kshs. 100,000/= and deposited one of his title as security for the balance of fee to enable him pay Ksh 200,000/=.

However, eight (8) months later he saw a stranger depositing building materials on the land and on inquiry he was informed that the land was purchased from 1<sup>st</sup> respondent who transferred the land to himself after he made him sign transfer documents that he was informed that were documents required for his cases. The applicant further counterclaim that the 1<sup>st</sup> respondent later caused to transfer the other parcels to unknown person being the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.

The respondent jointly opposed the said application by way of a replying affidavit that was filed by the 1<sup>st</sup> respondent pursuant to an authority issued by his co-defendants. The 1<sup>st</sup> respondent denied having received the sum of Kshs. 100,000/= as claimed by the applicant and averred that the suit land was transferred to him as his fees since he was acting for the applicant in Narok CMCC No. 30/2018 and that the transfer documents were duly executed by one Scolastica Mogera an Advocate and later all mutation were signed and executed.

The respondent contended that the applicant was misleading the court with his assertion. That the subject land was fraudulently transferred to the respondents.

I have considered the application before me and the submission by counsel for the representation. This is an application in which the applicant is seeking a mandatory orders of injunction; from the pleadings that were filed the main issue for determination is whether the transfer that was executed by the applicant was fraudulent or was the land transferred to him as his legal fees? This is a matter that can only be determined at full hearing where evidence will be heard and the circumstances leading to the transfer can finally be determined. Moreover, the applicant allegation are based on fraud which must be conclusively determined.

Having stated the above, I find that there is need to preserve the suit land pending the hearing and determination of the suit herein and consequently I find that the Notice of motion dated 5/5/2020 is merited and as I have already granted orders 1,2,3 and 4 at the interlocutory stage. I direct that there be a stay of proceeding in Narok Elc case No. 30 of 2020 pending the hearing and determination of the instant suit.

The costs of this application shall be in the cause.

**DATED, SIGNED AND DELIVERED Virtually at MIGORI this 30<sup>th</sup> day November 2021.**

**MOHAMED N. KULLOW**

**JUDGE**

**Ruling Delivered in the presence of :-**

Nonappearance for Plaintiff/Applicant

Nonappearance for Defendants

Tom Maurice.-Court Assistant