



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MOMBASA**

**ELC NO. 324 OF 2017**

**IBRAHIM MUSA MOHAMED.....PLAINTIFF**

**VERSUS**

**MWANATUMU ATHMAN ATHUR.....1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, MOMBASA..... 2<sup>ND</sup> RESPONDENT**

**RULING**

***(Application to be enjoined as interested party and applicant also seeking orders to set aside orders of injunction given in the suit; applicant having purchased land from a person who is not a party to the suit; applicant having purchased a subdivision of the land in dispute but that subdivision nullified in earlier proceedings; applicant clearly cannot seek remedies from either of the parties in the suit as they were not privy to his transaction; no place for the applicant in this suit; application dismissed)***

1. The application before me is that dated 21 June 2019 filed by one Robert Gathua Thuku, who wishes to be enjoined to this suit as an interested party and also wishes to have orders varying the orders of injunction issued on 15 February 2019. The application is opposed by the 1<sup>st</sup> defendant but not contested by the plaintiff.

2. To put matters into context, this suit was filed on 11 September 2017 through a plaint. In the plaint, the plaintiff has averred that the 1<sup>st</sup> defendant was registered as co-proprietor of the land parcel CR No. 17493 MN/III/592, together with one Juma Omar Abdalla. He pleaded that on 8 August 2012, the plaintiff sold the entire parcel of land to him at a consideration of Kshs. 7,500,000/=. He pleaded that the said land has since been subdivided into two portions being CR No. 70339 MN/III/11333 (the suit land) registered in the name of the 1<sup>st</sup> defendant and the other portion registered in the name of Juma Omar Abdalla. The plaintiff has filed this suit in order to compel the 1<sup>st</sup> defendant to transfer the suit land to the plaintiff. Together with the plaint, the plaintiff filed an application for injunction, seeking to restrain the transfer of the suit land to any other person pending the hearing and determination of the suit. That application for injunction was allowed through a ruling that was delivered on 15 February 2019. Thereafter the parties were directed to make ready their cases and the matter listed for a pre-trial conference on 21 June 2019. On that day, the case was given the hearing date of 12 November 2011 and indeed the matter did partly proceed on that day when the plaintiff gave his evidence.

3. In this application, the applicant avers that he is a purchaser for value of the suit land and has annexed a sale agreement between himself and one Grace Nyokabi Githome (Ms. Githome). He has deposed that the said Ms. Githome had purchased the land from the 1<sup>st</sup> defendant and transfer and title issued to her. He has deposed further that the title of Ms. Githome was revoked following judgment in the suit *Malindi ELC No 64 of 2007 William Ole Nabaala vs Attorney General & 6 Others*. He has disclosed that the suit property has been the subject of multiple suits including *ELC No. 158 of 2013 Robert Gathua Thuku vs Mohamed Sthambuli & 3 Others*. He has deposed that following the judgment in the suit *ELC No. 64 of 2007*, he has been seeking the cooperation of the 1<sup>st</sup> defendant to transfer his share to him. He has deposed that he had instructed his counsel to sue the 1<sup>st</sup> defendant but later learned of this suit by pure coincidence.

4. In opposing the application, the 1<sup>st</sup> defendant has deposed inter alia that the plot No. 592/III/MN was registered in favour of Juma Omar Abdalla who died on 8 March 1998 and she has annexed a Certificate of Death. She has deposed that letters of administration for his estate were issued to Mwanajuma Jumaa Omar and William Ole Nabaala and she has annexed the same. She has acknowledged that in the suit *Malindi ELC No. 64 of 2007*, the court nullified all subdivisions of the Plot No. 592 and ordered a fresh subdivision. She has pointed out that the applicant dealt with Ms. Githome who is not a party to this suit but was a defendant in *Malindi ELC No. 64 of 2007* and his right would only lie if Ms. Githome was a defendant in this suit.

5. Both counsel for the applicant and the 1<sup>st</sup> defendant fully relied on the affidavits on record. I have gone through the same.

6. It is apparent to me that the applicant purchased land from Ms. Githome through their sale agreement of 29 May 2007. That land is noted to be subdivision No. 1351 from the original Plot No. 592. I have also noted from the documents that the applicant annexed, that the applicant became registered as the owner of that plot which he purchased after Ms. Githome transferred her interest to him. Ms. Githome had

in turn purchased the subdivision from the 1<sup>st</sup> defendant. I have observed that through the case *Malindi ELC No. 64 of 2007*, the court nullified all subdivisions and ordered the original Plot No. 592 to be subdivided into two equal portions, one to the 1<sup>st</sup> defendant and the other to the estate of the late Juma Omar. I have not been informed that there is any appeal from that decision.

7. I am at a loss as to why the applicant wants to be enjoined in this case. His dealings were neither with the plaintiff nor with the 1<sup>st</sup> defendant but with Ms. Githome. If the applicant feels that he is aggrieved by his purchase from Ms. Githome, I do not see how he can seek remedy from either the plaintiff or the 1<sup>st</sup> defendant as none of them was privy to his transaction with Ms. Githome. In any event, the suit before me is whether or not the alleged sale between the plaintiff and the 1<sup>st</sup> defendant should be upheld and is a straight dispute based on the alleged contract between the two parties. I therefore do not see the place of the applicant in this litigation and his application to be enjoined is thus dismissed. There were other prayers to set aside the orders of injunction but I see no reason why the orders should be set aside. They were put in place to preserve the subject matter of this suit and I am not persuaded to set the same aside.

8. For the above reasons, it will be seen that I find no merit in this application. The same is hereby dismissed with costs to the 1<sup>st</sup> defendant.

9. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 29<sup>th</sup> day of January 2020.**

---

**MUNYAO SILA,**

**JUDGE.**

**IN THE PRESENCE OF:**

Ms Oguna holding brief for Mr Ngonze for the plaintiff.

Mr Mwandeje for the 2<sup>nd</sup> defendant.

No appearance on the part of M/s Mburu Kariuki & Co. for the applicant.

No appearance on the part of M/s Kanyi J. & Co. for the 1<sup>st</sup> defendant.

Court Assistant; David Koitamet.