



REPUBLIC OF KENYA



KENYA LAW
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**Mara North Holdings Limited v Mereru & 3 others (Environment & Land
Case 122 of 2017) [2020] KEELC 3968 (KLR) (15 April 2020) (Ruling)**

Neutral citation: [2020] KEELC 3968 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 122 OF 2017**

MN KULLOW, J

APRIL 15, 2020

BETWEEN

MARA NORTH HOLDINGS LIMITED PLAINTIFF

AND

NKUYATA MERERU 1ST DEFENDANT

MONARCH LODGE SAFARI 2ND DEFENDANT

NAROK COUNTY 3RD DEFENDANT

CHAIRMAN, OLULUNGA CONTROL BOARD 4TH DEFENDANT

RULING

1. By Notice of Motion dated 5/6/2015, and brought under Section 1 and 1B, and Order 40 Rule (1) of the *Civil Procedure Rules*. The Applicants sought the following orders: -
 - a. Spent
 - b. That an order of Injunction do issue restraining the 1st and 2nd defendants there, servant, agent and /or employee from constructing, developing or interfering with land reference Cis Mara/Koiyaki- Dagurugurueti/3931 and 3932 subdivided from land reference No Cis Mara/Koiyaki- Dagurugurueti/784 situate within Narok County, pending the hearing and determination of the suit.
 - c. That the Honourable court be pleased to issue an order of inhibitions against the 1st, 2nd, 3rd and 4th defendants there servant, and/or agents from wasting, leasing selling or in any manner disposing land reference No Cis Mara/Koiyaki- Dagurugurueti/3931 and 3932, pending the hearing and determination of the suit.



2. The application is based on the ground that the 1st defendant had leased the suit land for a term of 15 years from 20/3/2012 and following the grant of the leave, the 1st defendant in collusion with the 2nd and 3rd defendant has illegally and fraudulently colluded to sub-divide parcel No 784 into two other parcels named parcel No 3931 which was registered in the name of Nkuyata Mereru the 1st Defendant / Respondent.
3. It is the Applicant's contention that the said fraudulent and illegal actions were done without the consent, approval and /or knowledge of the plaintiff who held the bonafide lease of the suit property and consequent to the above, he, proceeded to commence developing or carrying out construction on the land.
4. The application was further based on the supporting affidavit of Bernard Leperes a Director of the applicant, and he averred that the land was first leased to the 1st defendant for a term of 15 years and despite the applicants meeting all it's obligations, the respondent fraudulently and in collusion with sub-divided the suit land.
5. The 1st and 2nd Respondents had opposed the application and filed grounds of opposition and a replying Affidavit, in which they stated that the applicant had not demonstrated that since the suit land is an Agricultural land they had procured the consent of the land Control Board and because of the above the lease to the applicant is void for want of the requisite consent of the Land Control Board.
6. The Respondent contend that there is no lease that was registered which limit any dealing in the land.
7. I have considered the application before me and the grounds of oppositions and the Replying Affidavit and the submissions. This is an Application that seek various injunction order based on the lease on the suit land. The grounds upon which the orders of injunction can be granted is now well settled.
8. The applicants contend that the Director acting in collusion had sub-divided the said fraudulently. They have not stated the particulars of the alleged fraud and the issue that the applicants allegation can only be determined at a final hearing in which the basis of the alleged fraud will be canvassed and subjected to the vigorous of cross-examination and that being so, I find the issue raised by the Applicant will be crystallise during all full hearing and I consequently find that the Application does not meet the threshold to warrant the grant of the order sought and I dismiss the same.

DATED SIGNED DELIVERED, VIRTUALLY AT MIGORI THIS 15TH DAY APRIL OF 2020.

MOHAMMED .N. KULLOW

JUDGE

