



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 140 OF 2015

FATUMA BAKARI MNUBI.....PLAINTIFF/ APPLICANT

=VERSUS=

RALSLY JAMES KAMBI.....DEFENDANT/RESPONDENT

R U L I N G

1. Before me is the Application by the Plaintiff dated 19th August, 2015 seeking for the following reliefs:
 - (a) **That the Respondent, his servants, agents and/or employees be restrained by way of temporary injunction from dealing, leasing, constructing, selling, wasting, damaging, intruding, trespassing, developing and/or interfering with plot no. 179 Kikomani/Makobeni pending the hearing and determination of the suit herein.**
 - (b) **That cost of this application be provided for.**
2. The Application is premised on the grounds that the Respondent sold the suit property to the Applicant on 29th May, 1984; that a dispute arose in HCCC No. 480 of 1988 in Mombasa and that the said suit was decided in the Plaintiff's favour.
3. It is the Plaintiff's case that contrary to the court's order, the Defendant fraudulently registered himself as the owner of the suit property.
4. In response, the Defendant deponed that he is the registered owner of parcel of land known as Kambe/Ribe/Kikomani/Makobeni/179; that the Plaintiff took advantage of his illiteracy to grab his land and that the Plaintiff have not executed the Judgment of 16th December 1991 is statute barred from deriving any benefits from it.
5. I have considered the submissions on record.
6. The evidence before this court shows that the Plaintiff entered into an agreement of sale with the Defendant on 17th May 1983 in respect to the suit property.
7. A dispute later on arose between the Plaintiff and the Defendant on the actual acreage that was sold to the Plaintiff.
8. The Plaintiff herein filed a suit in Mombasa HCCC No. 480 of 1988 which was decided in her favour

on 16th December 1991.

9. In that suit, the court declared the Plaintiff “the exclusive owner” of the suit property and restrained the Defendant from interfering with the Plaintiff’s use of the same.

10. Indeed, an order was extracted on 12th July 1993.

11. The said order directed the District Registrar, Kilifi, to register the suit property excluding thereby a portion of the plot occupied and possessed by Mr. Faki Kombo.

12. It would appear that a title deed for land known as Plot 179 measuring 6.3 Ha was registered in favour of the Defendant on 12th May 2009 contrary to the order of the court.

13. Although the Defendant has deponed that the Judgment of the court is time barred, it is for the Defendant to explain at the hearing how he managed to have the suit property registered in his favour contrary to the court orders.

14. However, considering that the Plaintiff has not prayed for a permanent order of injunction in his Plaintiff, and in view of the fact that court's do not issue orders in vain, I make the following orders:-

(a) The status quo prevailing now to be maintained pending the hearing of the suit.

(b) The Defendant to pay the costs of the Application.

Dated and delivered in Malindi this 1st day of **April**, 2016.

O. A. Angote

Judge