



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ENVIRONMENT AND LAND CASE NO. NO. 39 OF 2013

F S H.....PLAINTIFF

-VERSUS-

HILMY SULEIMAN SALIM

THE LAND REGISTRAR MOMBASA.....DEFENDANT

RULING

[1] I have read the written submissions of the counsels for the applicant and the counsel for the respondent. The following facts are apparent.

The applicant is the grandmother of the 1st respondent. She avers she bought the suit property from Bihamu Binti Ali Darani who was the owner of the land and who had asked the tenants who included the applicant to purchase the areas they occupied. Once she bought the land she registered it in her daughters names. One of the daughters is the mother of the 1st respondent. The daughters were living with her in her house with minor grandchildren that included the 1st respondent. She later found documents for her land missing and reported to the Chief and the police. She later found the documents of offer of the house and memorandum of registration of transfer dated 23rd December, 2002. She annexed them to her affidavit dated 16th July, 2013. There is also the affidavit of Mohamed Swaleh Darani who avers that the applicant was a tenant during the years 1985 - 1987 and that they as a family offered the applicant to purchase a portion of their subdivided plot at a purchase price of Ksh. 30,000. The said Mr. Mohamed Swaleh Darani says the 1st respondent Hatimy Suleiman's parents were never a party to the sale and they never purchased the plot. The 1st respondent on his part says he is the owner of subdivision no. 8082 original no. 4830/46 Section 1 Mainland North. He avers that his late parents Suleiman Abdallah Salim and Zainabu Ibrahim Nazir bought the property in 1990 for Kshs. 30,000. He alleged that his said parents put up the house and were paying rent to Bihamna Binti Ali Darani regularly until purchase. He alleged that the applicant and her daughter M was invited to the house to live with his parents after the said M was divorced from her husband and that the suit land was transferred to the plaintiff and M I as his trustees as he was then 9 years old. He alleges he never stole the title documents but admits the plaintiff made a report to the police station which he terms as malicious.

[2] *These being the competing interests and averments in this case, should an injunction be granted?* The applicant is the grandmother of the 1st respondent. It is not in doubt they they all lived in the disputed premises. Mohamed Swelah Darani a member of the Darani family has sworn a statement recognizing the applicant as the one who purchased the plot before the respondent was born and when his mother was a schoolgoing girl in high school. The 1st respondent has not produced any documents as to purchase, or registration or otherwise of the suit property. There is no doubt these issues shall surface at the hearing hereof. I find that on the balance of convenience the applicant has established a reasonable basis upon which his prayer's should be granted. I allow the notice of motion dated 18th February, 2014 as prayed.

**Dated and delivered in open court a Mombasa this 4th day of September, 2014.**

**S. MUKUNYA**

**JUDGE**

**4.9.2014**

In the presence of:

Nyamindi Advocate for the plaintiff

Ibrahim Advocate for Oduol Okumu Advocate