



REPUBLIC OF KENYA

High Court at Machakos

Civil Case 265 of 2011

SPECIAL MINISTRIES PLAINTIFF/APPLICANT

VERSUS

JOEL KITINA MUSIA DEFENDANT/RESPONDENT

RULING

The **Notice of Motion** dated 28/9/2011 is brought under **Order 3A & 63 e of the Civil Procedure Act Order 10 Rule 1, 2, 3, 4** of the **Civil Procedure Rules** and all other enabling provisions of the law.

The application seeks an order of temporary injunction to issue restraining the Defendant by himself and/or by his authorized agent, servant, employee and/or any person acting under his authority from in any way dealing, disposing, selling and/or transferring to third parties all that parcel of land known as **Iveti/Mung'ala/1752** pending the hearing and determination of this suit.

The application is supported by the affidavit of **Samson Olomunyak Teeka** sworn on 28/9/2011. The background facts according to the said affidavit, is that the Plaintiff is a duly registered **Non Governmental Organization** (NGO) with several branches within the Republic of **Kenya**. That on 13/8/2004 the Plaintiff purchased three acres of land from land parcel **Iveti/Mung'alla/166**, from the Defendant for a consideration of Kshs.750,000/=. The three acres of land were subsequently excised from land parcel No. **Iveti/Mung'alla/166**, and given title No. **Iveti/Mung'alla/1752**. The Plaintiff took possession of the land and developed it by putting up a pre-school, offices, a chapel and a borehole. The Defendant failed to transfer the title to the suit property to the Plaintiff and is in the process of transferring the property to a third party, prompting the Plaintiff to file suit.

The Respondent, **Joel Kitina Musia** swore an affidavit on 10/11/11 opposing the application. According to the Defendant, the application is incompetent as the Plaintiff has no capacity to sue, being neither a natural person nor a legal person.

The Defendant deponed that in the year 2002, he was approached by leaders of a local women group known as **Katisaa Hope Centre Group** who requested him to sell to them a piece of land where they could put up a school. The women’s group bought a portion of the Defendants land parcel No. **Iveti/Mung’alla/166** through the sponsorship of a Christian organization known as **Special Ministries Kenya Hope**. The Defendant subdivided the suitland and obtained a separate piece No. **Iveti/Mung’alla/1752** for the portion of land he had sold to **Katisaa Hope Centre Group**. That transfer of the title to the purchaser has however not been effected. The Defendant further stated that no land control board consent was obtained for the transaction the Plaintiff has alluded to.

The firm of **B.M. Mung’ata Advocates** appeared for the Plaintiff while **Nzei & Co. Advocates** appeared for the Defendant. The application was canvassed by way of written submissions which I have duly considered.

The Defendant has raised the issue whether the Plaintiff has the capacity to sue or be sued. The Plaintiff has exhibited a certificate of registration (**Annexure “ST 1”**). Being a registered NGO, the Plaintiff has the capacity to sue and to be sued as provided for by **Section 3 (2) (a)** of the **NGO Act**.

The Plaintiff has also exhibited a sale agreement made on 13/3/2004 between the Plaintiff and the Defendant for the sale of a portion of land parcel known as **Iveti/Mung’alla/166** for a sum of Kshs.750,000/= (**Annexure “ST 2”**). The Plaintiff has also annexed evidence of payment by way of cheques and vouchers for the full purchase price (**annextrue “ST 4”**). The cheques and vouchers on the face of it read **“Special Ministries – Kenya” on account of “Katisaa Hope Centre”**.

The Defendant in his replying affidavit has talked of **Katisaa Hope Centre Group** which was sponsored by **Special Ministries Kenya Hope**. It appears **Katisaa Hope Centre Group** and **Special Ministries** are interrelated. It may not be the Defendant’s place as the vendor to explain the intricate details of the relationship between **Katisaa Group** and **Special Ministries** or where the money for the purchase came from.

The Plaintiff was in the view established a *prima facie* case with a probability of success. The subject matter of the suit is land which was developed following the purchase. The Plaintiff therefore stands to suffer substantial loss which cannot be compensated in monetary terms.

Consequently, I allow the application with costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 2nd day of May 2013.

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JUDGE