

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CIVIL SUIT NO. 382 OF 2017

AS CONSOLIDATED WITH CIVIL SUIT NO 496 OF 2018

CALEB MIHESO IJAMII PLAINTIFF

= VERSUS =

MIRAFLORES APARTMENT LTD 1st DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

PORT SAID APARTMENT LTD 3rd DEFENDANT

STANBIC BANK & 5 OTHERS 4TH TO 9TH DEFENDANTS

RULING

1. There are two applications for determinations. The first one, dated 20th June, 2025, is brought by the Plaintiff in case number 382 of 2017 seeking several orders as follows:

- 1) **That this application be certified as urgent service be dispensed with and be heard ex-parte in the first instance.**
- 2) **That this honourable Court be pleased to prohibit the 1st, 2nd, 5th, 6th and 7th Respondent's from manipulating, interfering, tempering and acting in any manner that affect the record of the land ownership as at they were in**

2017 or dealing with the said property in any manner that undermines the ownership of the land by Applicant.

3) That this Honourable Court be pleased to Order the 1st and 4th Respondent to produce:

(i) An official search certificate that was done before 2010 or thereabouts, which they received before engaging in loan agreement that they alleged to have acquired using the title of the suit land.

(ii) The copy of the loan agreement identifying the part where the land was used as a collateral to secure the loan.

(iii) The original copy of the title deed that was used to secure the purported loan.

4) That this Honourable Court be pleased to Order the 3rd Respondent to produce:

(i) The sale agreement to they purport to have entered in with the Applicant.

(ii) The details of the account in which they paid in the alleged Kshs.23,000,000.00, to the Applicant.

(iii) The copy of the official search they did before the alleged purchase of the land in 2016.

- (iv) **The copy of the title deed that was used in the transfer of the land to them.**
 - (v) **The copy of transfer documents that were used to bequeath the Respondent said land.**
- 5) The Honourable be pleased to Order the Director of Criminal Investigation (DCI) to produce:**
- (i) **The investigation report that was carried out in 2018 regarding the bank loan agreement between the 1st Respondent and the 4th Respondent.**
 - (ii) **The investigation report on the that was carried out in 2018 regarding the ownership of the suit land.**
- 6) The Honourable Court be pleased to Order the 5th Respondent to Invalidate the title deed of the suit property in the name of the 8th Respondent and reinstate the same to the original owner who is the Applicant in this suit.**
- 7) The Honourable Court be pleased to Order the 6th Respondent to produce the certified copy of the deed plan of the suit plan and details of the ownership (Green Card).**
- 8) The Honourable Court be pleased to Order the 2nd Respondent to produce the report of the meetings held between themselves, the Applicant and the 1st Respondent**

in 2016 regarding the suit land before advising the Applicant to approach this Honourable Court.

- 9) The Honourable Court be pleased to order that the 7th Respondent is a stranger to this suit.**
- 10) The Honourable Court be pleased to order that the 9th Respondent waves all the land rates to the Applicant in regards to the land until when the case is concluded and the land is in full usable state.**
- 11) That the Court do make any other ancillary orders it may deem appropriate for the proper, fair and effective execution of the preservation orders.**
- 12) That costs of this Application be in the cause.**

2. The application is supported by the grounds listed on its face inter alia;

- 1) That the 1st Respondent through the 4th Respondent contacted auctioneers to sale the Applicant's land via a gazette.*
- 2) That the after the in the midst of the 2nd Respondent hearing and the meetings thereto, the 1st Respondent indicated that they had used the title deed to secure a loan with the 4th Respondent.*
- 3) That 2nd Respondent ordered the 4th Respondent to produce the said title deed which was used to secure the loan but on numerous occasions they failed to provide the same.*

4) *That it is upon this time that 2nd Respondent advised the Applicant to approach this Honourable to seek eviction orders which were granted.*

3. The application is opposed by all the Defendants, with the 1st and 4th Defendants each filing grounds of opposition, while the 3rd Defendant filed a replying affidavit. The 1st Defendant pleads that:

1) *The application lacks a legal basis and mainly based on hearsay.*

2) *The application is purposeless as it does not display the intended use of the documents it seeks to be produced.*

3) *The Court cannot be called upon to order the production of documents where the intended use of the said documents is not certain.*

4) *The application offends the doctrine advanced by **Lenaola J.** (as he then was) in **Timothy Njoya -v- Attorney General and another [2014] eKLR** where it held that;*

“A party seeking production of documents under Article 35(1) of the Constitution must state clearly the information required, the right they wish to advance and how the information sought would assist in the advancement of that right.”

5) *The application maliciously crafted hence an abuse of the Court process.*

4. The 4th Defendant stated vide its grounds of opposition as follows:

1) *It cannot lie in law.*

2) *It is omnibus and unintelligible.*

3) *It is a fishing expedition for evidence to attack an issue that has already been decided by the Court.*

5. Through the replying affidavit of Mr Mahat Shire, the 3rd Defendant deposes that it is the Plaintiff who sold the suit land. He annexed a copy of the sale agreement dated 7th January 2016 to buttress their averment. He deposes that subsequently the Plaintiff/Applicant transferred the said land to them and avers the Applicant has come to Court with unclean hands hence he is not entitled to the reliefs sought.

6. According to the 3rd Defendant, since the Plaintiff/Applicant having sold the said land to them for valuable consideration, he cannot still seek to enjoy the same. The 3rd Defendant stated that the application has been brought late in the day and the orders sought are incapable of being granted. He urged the Court to dismiss the application so that the suit can proceed to full trial.

7. The application was prosecuted by way of oral submissions which I have considered. During the hearing of the application, Mr Kalama, learned

counsel for the Plaintiff conceded that prayer under paragraph 10 of the motion to be pursued with the 9th Defendant under the Rating Act.

8. Under prayer 9, the 7th Defendant was sued as the 1st Defendant by the 3rd Defendant in ELC 496 of 2018 before the two suits were consolidated. In that plaint, it was described that the 1st and 2nd Defendants had used the suit property to secure a loan from Stanbic Bank Ltd. Therefore, it is not within the powers of the Plaintiff/Applicant to determine the relevance or otherwise of this party.
9. From my reading of the pleadings filed by the Plaintiff/Applicant, I get the impression of the existence of two or three parallel titles over the suit properties. One set owned by the Applicant, a second set held by the 3rd Defendant now that the Plaintiff has not owned up to selling the land to them and the third set held by the 1st Defendant (Miraflores Apartment Ltd).
10. It is on this basis that the Applicant wants to be declared as the owner of suit property. On account of the alleged existence of parallel titles signifies parallel records. The Applicant under prayer (1) of the motion does not specify which records he wants the Defendants to be prohibited from manipulating.
11. I have perused the records of the file 382 of 2017 and noted there is a copy of mortgage document annexed to the 1st Defendant's replying affidavit sworn on 3rd October 2017 in opposition to his application dated

9th June, 2017. The said affidavit also annexed copies of the title deed held by the 1st Defendant.

12. In terms of the documents requested under prayer (4) of the motion, the documents have already been annexed to the replying affidavit filed under this application save for certificate of official search.
13. The Applicant wants this Court under prayer 5 to compel the DCI to produce a report of their investigation carried out in 2018 regarding the loan agreement between the 1st and 4th Defendants. Neither the grounds pleaded nor the affidavit sworn in support thereof lay a basis why the order is sought. There was need for a foundation to be laid taking into consideration that the Applicant wanted to be supplied with a report it was not party to nor part of the alleged investigations.
14. The orders under paragraphs 6 and 7 are mandatory in nature and in my opinion are only available to the Applicant after it has proved his claim. Similarly, the Applicant having been part of the meetings with the 2nd Defendant, he must be aware of the dates of those meetings. He has not specified he wants to be supplied with minutes of meetings for which dates.
15. In light of the foregoing observations, this application is devoid of merit. It is therefore dismissed with costs to the Defendants.

Dated, signed and delivered at NAIROBI this 30th day of October 2025.

A. OMOLLO

JUDGE

ORIGINAL