



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 4 OF 2016**

**STAVROULA GEORGOPOULOU**

**(FORMERLY STAVROULA ROUSALIS)..... PLAINTIFF**

**VERSUS**

**DENACY INVESTMENTS LIMITED.....1<sup>ST</sup> DEFENDANT**

**DAVID RONALD NGALA ADHOCH.....2<sup>ND</sup> DEFENDANT**

**LABH SINGH HARMAN SINGH LIMITED.....3<sup>RD</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR .....4<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL .....5<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Application dated 18<sup>th</sup> November, 2015, the Plaintiff is seeking for the following orders:

**a. That the 1<sup>st</sup> Defendant by itself or through its servants or agents and/or through anyone deriving title through it be jointly and severally restrained from alienating, selling, transferring, leasing and/or charging or in any other manner whatsoever from having any dealings with all that parcel of land known as Land Reference No. 12715/595, Machakos County (the suit property) pending the hearing and determination of this suit.**

**b. That the 1<sup>st</sup> Defendant by itself or through its servants or agents and/or through anyone deriving title through it be jointly and severally restrained from constructing any building or any other structures on the suit property pending the hearing and determination of this suit.**

**c. That the 4<sup>th</sup> Defendant be inhibited from registering any dealings of whatsoever nature with regard to the suit property and the other suit property pending the hearing and determination of this suit.**

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that by an agreement dated 3<sup>rd</sup> November, 1992 between herself and one Samuel Muema in respect of land reference L. R. No. 12715/595, Machakos County (the suit land), she purchased the said land for Kshs. 2,000,000.

3. According to the Plaintiff, she entered into another Sale Agreement with one Reuben Mutuku Kiva on

12<sup>th</sup> November, 1992 and purchased L.R. No. 12715/632 for Kshs. 2,000,000 and was later on registered as the proprietor of the said land.

4. It is the Plaintiff's deposition that she was subsequently registered as the proprietor of the suit land and that she left Kenya for Greece on 10<sup>th</sup> December, 1994 and has never returned; that she was issued with provisional certificates of titles for the two suit properties on 23<sup>rd</sup> October, 1997 and 20<sup>th</sup> November, 1997 respectively after the losing the original titles and that upon his advocate conducting official searches, he discovered that the genuine entries Nos. 5 and 6 of her titles had been removed and replaced with totally different entries.

5. It is the Plaintiff's deposition that she has never sold the suit properties as alleged by the Plaintiff in Machakos HCCC No. 60 of 2015 (*the 3<sup>rd</sup> Defendant herein*) and that she has never executed a power of Attorney in favour of the 2<sup>nd</sup> Defendant as indicated in the transfer documents.

6. The Plaintiff also denied ever selling L.R. No. 12715/595 to the 1<sup>st</sup> Defendant as shown in the Agreement of Sale of 26<sup>th</sup> November, 2009 and that there is no proof that she ever received the purchase price of Kshs. 20,000,000 from the 1<sup>st</sup> Defendant.

7. The Plaintiff finally deponed that the signature appearing on the Sale Agreement is not hers; that she was not in Kenya on the date she allegedly signed the Sale Agreements; that she has never signed an agreement before Kivuva advocate and that she has never received any money from Kivuva advocate being the purchase price for the suit land.

8. The Plaintiff also denied ever executing the Transfer document dated 8<sup>th</sup> May, 2007 in favour of the 3<sup>rd</sup> Defendant for L.R. No. 12715/595.

9. It is the Plaintiff's case that the 1<sup>st</sup> Defendant, who is registered as the proprietor of L.R. No. 12715/595, is in possession of a false and fraudulently obtained title.

10. Although the Defendants herein entered appearance after being served with the Summons to Enter Appearance and the Application, none of the Defendants responded to the Application.

11. The Plaintiff's advocate filed detailed submissions and authorities in respect to the Application dated 18<sup>th</sup> November, 2015 which I have considered.

12. The evidence before me shows that the Plaintiff, or someone going by the Plaintiff's name, purchased L.R. No. 12715/595 (*the suit land*) from one Samuel Muema vide an agreement dated 3<sup>rd</sup> November, 1992. The land was then transferred to the Plaintiff on 6<sup>th</sup> January, 1993.

13. It would appear that the original title document that was in possession of the Plaintiff got lost, and vide the Plaintiff's advocate letter dated 24<sup>th</sup> December, 1996, she applied for a provisional certificate of title in respect of L. R. No. 12715/595, which was issued on 23<sup>rd</sup> October, 1997.

14. Upon her advocate conducting a search, the Plaintiff has deponed that it was discovered that the land had been transferred to the 1<sup>st</sup> Defendant on 13<sup>th</sup> August, 2010 for a sum of Kshs. 20,000,000.

15. The Plaintiff has denied ever transferring the suit land to the 1<sup>st</sup> Defendant. She deponed that she has never given to the 2<sup>nd</sup> Defendant or anyone else the Power of Attorney to transact in the suit land and that the title which is now in the name of the 1<sup>st</sup> Defendant was fraudulently obtained.

16. The Plaintiff has exhibited her passport which shows that since she exited Kenya in the year 1994, she has never been back in Kenya.

17. Although it is purported that the Plaintiff donated to the 2<sup>nd</sup> Defendant a Power of Attorney on 2<sup>nd</sup> February, 2007 to execute all documents on her behalf, the advocate who purportedly witnessed the Plaintiff execute the said Power of Attorney did not file any Affidavit in this matter to support that assertion.

18. Considering that the Defendants have not disputed by way of Replying Affidavits the depositions in the Plaintiff's Affidavit, and in view of the denial by the Plaintiff that she has never sold the suit land, I find that the Plaintiff has established a prima facie case with chances of success.

19. For those reasons, I allow the Application dated 18<sup>th</sup> November, 2015 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26<sup>TH</sup> DAY OF JANUARY, 2018.**

**O.A. ANGOTE**

**JUDGE**