



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. 7 OF 2017**

ABDIRASHID ADAN HASSAN.....1<sup>ST</sup> PLAINTIFF/APPLICANT

JARED JUMA.....2<sup>ND</sup> PLAINTIFF/APPLICANT

STEPHEN MAROA NYAMOHANGA.....3<sup>RD</sup> PLAINTIFF/APPLICANT

=VERSUS=

ABDI AKIM MOHAMED.....1<sup>ST</sup> DEFENDANT/RESPONDENT

WARDA MOHAMED ABDALLA.....2<sup>ND</sup> DEFENDANT/RESPONDENT

MOHAMMED SULEIMAN WARSAME...3<sup>RD</sup> DEFENDANT/RESPONDENT

**RULING**

1. The Plaintiff/Applicants filed a Notice of Motion dated 3<sup>rd</sup> January 2017, in which they sought the following orders:-

***1. That this application be certified urgent and be forthwith placed before the Honourable duty Judge during this Court vacation and be heard ex-parte in the first instance.***

***2. That there be a temporary injunction restraining the respondents by themselves, their agents, employees, servants or any other person(s) claiming and or acting through them from entering, demolishing, destroying, flattening, building, constructing, developing, selling, alienating and or interfering in any manner however and whatsoever with parcel of land reference No LR.No.36/11/194 situated along 6<sup>th</sup> Street Eastleigh within Nairobi until the hearing and determination of this instant application.***

***3. That there be a temporary injunction restraining the respondents by themselves, their agents, employees, servants or any other person(s) claiming and /or acting through them from entering, demolishing, destroying, flattening, building, constructing, developing, selling, alienating and or interfering in any manner however and whatsoever with parcel of land reference No LR.No.36/11/194 situated along 6<sup>th</sup> Street Eastleigh within Nairobi until the hearing and determination of this suit.***

***4. That the applicants be allowed free access, ingress and egress to and from parcels of land LR.No.36/11/194 situated along 6<sup>th</sup> Street Eastleigh within Nairobi without any interference whatsoever until full hearing and determination of this suit.***

***5. That the cost of this application be borne by the Respondents.***

2. The applicants contend that on 16<sup>th</sup> December 2011, they entered into a sale agreement with the first and second respondents for the purchase of **LR No.36/11/194** situated along 6<sup>th</sup> Street Eastleigh in Nairobi (suit property). They contend that the first respondent was the administrator of the estate of the late *Mohammed Abdalla* (deceased) who was the registered owner of the suit property.

3. The purchase price was **Kshs.20,000,000/=**. It was agreed that **Kshs.4,000,000/=** was to be paid on execution of the sale agreement and the balance was to be paid by monthly installments of **Kshs.300,000/=**. Possession was to be given after six months from the date of signing the agreement. The applicants contend that they have so far paid **Kshs.12,146,693**. When they sought to have possession, the first and second respondents refused to allow them to take possession. The applicants realized that the first and second respondents had entered into a lease with the third respondent who started demolishing the structure which was on the suit property.

4. The applicants made a report of the incident to *Pangani Police Station* but were not assisted. The police told them that they required a Court Order before they could assist them. This is why the applicant's came to Court to protect their interest in the suit property.
5. The first and second respondents opposed the applicants' application based on a replying affidavit sworn on *21<sup>st</sup> November 2017*. The first and second respondents contend that the suit property belongs to the deceased who is their father. The suit property is subject to two suits that is *Nairobi HC Miscellaneous case No.120 of 2013* and *Succession Cause No. 55 of 2015* before the Kadhi's Court in Nairobi. In *Nairobi High Court Miscellaneous case No. 120 of 2013*, the Court ordered that succession in respect of the estate of the deceased was to be undertaken by the first respondent and his brother *Abdisalam Mohamed Abdalla*. In accordance with the directions of the High Court, the first respondent and his brother moved to the Kadhi's Court where they applied for letters of administration of the estate of the deceased.
6. The first and second respondents deny ever entering into a sale agreement with the applicants in respect of the suit property. The confirmed grant which the applicants claims to have been the basis of the sale agreement was found to be a forgery because *High Court Succession Cause No. 952 of 2006* which the applicants are relying on relates to the estate of one **Jayantilal Popatilal Shah** alias **Javantilal Padamshi Shah**.
7. The first and second respondents deny receiving any amounts from the applicants or ever releasing the documents the applicants have stated in their affidavit. The second respondent had no capacity to enter into any sale agreement as she was not an administrator of the estate of the deceased.
8. The third respondent opposed the applicants' application based on a Replying Affidavit sworn on *20<sup>th</sup> September 2017*. The third respondent contends that he entered into a lease of the suit property with the first respondent on *20<sup>th</sup> February 2009*. The period of the lease was 15 years at a monthly payment of Kshs.55,000/=. The third defendant contends that the applicants have no cause of action against him.
9. I have considered the applicants' application as well as the opposition thereto by the respondents. The parties herein had agreed to file written submissions on *11<sup>th</sup> April 2017*. As at *14<sup>th</sup> December 2017* when a Ruling date was given, no party had filed submissions. Be that as it may, I will go ahead to decide this application. This being an application for injunction, the applicants are expected to demonstrate that they have a prima facie case against the respondent. The only issue for determination is whether they have demonstrated that they have a prima facie case to warrant issuance of injunction as prayed for.
10. The applicants are claiming to have entered into a sale agreement with the first and second respondents in their capacity as administrators of the estate of the deceased. The applicants annexed a copy of confirmed grant in respect of the estate of the deceased which was purportedly issued on *31<sup>st</sup> October 2006* in *Nairobi HC Succession Cause No. 952 of 2006*. According to this grant, the second respondent is not an administrator of the estate of the deceased. It is only the first respondent who is an administrator. This grant was doubted and a clarification was sought from the Court by the advocate for the first and second respondent. The Court confirmed that the alleged grant in respect of the estate of the deceased actually related to a different person. The applicants did not file any further affidavit to refute this fact.
11. The applicants entered into a sale agreement on *16<sup>th</sup> December 2011*. By this time, the third respondent had entered into a lease agreement with the first respondent. The heirs of the estate of the deceased had not applied for letter of administration. The letters of administration were applied for in the year 2015 after the High Court gave directions in the year 2013. I therefore find that the applicants have not demonstrated that they have a prima facie case against the respondents.
12. The third respondents who had leased the suit property has already demolished the structure which was on the suit property. The applicants had purchased the suit property with that structure. In their own application, they concede that the purchase price has gone down now that the structure which was on the suit property has been demolished. If the applicants will finally succeed, they are capable of being compensated in damages. Even on a balance of convenience, it is the third respondent who is in possession having entered the suit property earlier than the applicants. I therefore do not find that an injunction can be issued in the circumstances. The applicants' application is hereby dismissed with costs to the Respondents.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 22<sup>nd</sup> day of February ,2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :

Mr Bashir for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Court Assistant : Kevin

**E.O.OBAGA**

**JUDGE**