



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 300 OF 2017**

**FRANCIS M KIMANI & ANOTHER.....PLAINTIFFS**

**VERSUS**

**NANCY W MUNYUA & 2 OTHERS.....DEFENDANTS**

**RULING**

1. This is a Ruling in respect of a Notice of Motion dated 3<sup>rd</sup> May 2017, brought by the Plaintiffs/Applicants. The applicants are seeking an injunction restraining the first and second respondents or their agents from transferring, alienating, and or charging LR No. Nairobi Block 82/1342 (suit property) until hearing and determination of this suit.

2. The applicants contend that they bought the suit property from Continental Developers Limited in 1989. The suit property was duly transferred into their names and that they took immediate possession of the same. In the year 2014, the first respondent emerged and started claiming interest in the suit property. She lodged a complaint with the Directorate of Criminal Investigations. The applicants were asked to produce their documents of ownership which they did. They contend that the first respondent did not produce her documents; that the matter is still under investigations.

3. The applicants later learnt that the first respondent had obtained a lease over the suit property. Their efforts to carry out a search on the suit property did not yield any positive results in their favour. They now contend that the first and second respondents have colluded to have the suit property in the name of the first respondent and that the Land Register has been tempered with.

4. The first respondent has opposed the applicants' application based on a replying affidavit sworn on 20<sup>th</sup> June 2017 and a supplementary affidavit sworn on 12<sup>th</sup> June 2017. The first respondent has denied all the allegations by the applicants as contained in their supporting affidavit. The first respondent started paying for the suit property which she purchased from Continental Developers Limited in the year 1989. The suit property was then known as plot 758 which later became LR Nairobi Block 82/1342. The suit property was registered in the name of Continental Developers Limited. When she completed paying for the suit property, it was transferred into her name.

5. A search carried out in 2017 shows that she is the registered owner of the suit property. The vendor of the suit property has sworn an affidavit in support of her claim to the suit property. The vendor states through its Director that in the year 2014, they discovered that unscrupulous persons had forged title documents in respect of the suit property with a view to grabbing the same. They wrote a letter to the Lands Office protesting the move. The vendor denied any dealings with the applicants who have never purchased the suit property from the Company.

6. This being an application for injunction, the applicants were expected to demonstrate that they have a prima facie case with probability of success. In other words, they ought to have met the threshold set out in the case of **Giella Vs Cassman Brown & Co Ltd ( 1973) EA 358**.

7. The applicants claim that they purchased the suit property from Continental Developers Limited in 1989. Other than a transfer and certificate of lease, there are no documents such as agreement for sale or evidence of payment for the plot. The applicants did not file any further affidavit to refute the contention by Continental Developers Limited who stated that they never dealt with them at any stage.

8. As at the time, the applicants claim to have purchased the suit property, it is the first respondent who was still paying for the suit property having started doing so in 1986. The applicants have annexed a letter dated 23<sup>rd</sup> October 1990 addressed to the first respondent which purports to cancel her purchase of the suit property. The documents annexed to the first respondent's affidavit show that as at the time this letter was being written, she was actively paying for the suit property.

9. The records held in the Lands Office do not reflect the applicants as owners of the suit property. Though the applicants claim that they have been in possession of the suit property since 1989, they have annexed a letter dated 23<sup>rd</sup> August 2014 in which the Nairobi City County

granted them permission to fence the suit property using a barbed wire. The temporary structures they erected on the suit property are newly constructed and could not have been in place for 10 years as they allege in documents in opposition to an application which is related to this one.

10. Based on the documents presented before the Court, I do not find that the applicants have established any prima facie case to warrant issuance of injunction. The applicants' application is hereby dismissed with costs to the respondents.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 21<sup>st</sup> day of February 2018.**

**E.O.OBAGA**

**JUDGE**

In the presence of :

Mr Tebino for Mr Kibanya for 1<sup>st</sup> Defendant

Court Assistant: Kevin

**E.O.OBAGA**

**JUDGE**