

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 120 OF 2017

SAMUEL KANOGO RITHO.....1ST PLAINTIFF

SARIM HOLDINGS LIMITED.....2ND PLAINTIFF

VERSUS

LISCOM COMPUTERS AND ACCESSORIES LIMITED...DEFENDANT

RULING

The Plaintiffs seeks a temporary injunction to restrain the Defendant or its agents from trespassing, dealing, developing, constructing, entering, subdividing, leasing, charging, transferring, selling or in any manner dealing with the land known as Nairobi Block 94/3 ("the Suit Property") pending hearing and determination of this suit.

The Plaintiff's application dated 20/2/2017 is supported by the affidavit of Geoffrey Avugwi Ritho. It is based on the grounds that the Plaintiffs are the registered owners of the Suit Property and have never transferred it. The 1st Plaintiff acquired the Suit Property pursuant to the court's judgement in **HCCC No. 1048 of 1996** following which the Deputy Registrar executed a transfer in a favour of the Plaintiff on 21/12/2005. The Plaintiff disputes the Defendant's claim that it acquired the Suit Property from Sam Asiligwa Luseno. The 1st Plaintiff granted Geoffrey Avugwi Ritho the general power of attorney to sue on his behalf.

The Plaintiff produced a copy of the plaint filed in HCCC No. 1048 of 1996 together with the copy of the decree vide which a declaratory judgement was entered in favour of the 1st Plaintiff, that the Defendant held L.R. No. Nairobi Block 93/3 in trust for the 1st Plaintiff; and directing the Defendant to execute the transfer documents failing which the Deputy Registrar of the High Court would execute the transfer. A copy of the transfer of lease executed by the Deputy Registrar was also annexed together with a copy of the certificate of lease issued to the Plaintiffs on 30/12/2005.

The Defendant did not file any response to the application for injunction. It instead gave notice that it would raise a preliminary objection. The objection was argued and dismissed by the court.

The court is satisfied that the Plaintiffs have a prima facie case against the Defendant with a probability of success. It is necessary to restrain the Defendants from dealing with the Suit Property pending hearing and determination of the suit. Prayer 3 of the application dated 20/2/2017 is allowed. The Plaintiffs are awarded the costs of this application.

Dated and delivered at Nairobi this 21st day of February 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Kwesiga holding brief for Mr. Kiiru for the Plaintiffs

Mr. Kigata holding brief for Mr. Oduk for the Defendant

Mr. V. Owuor- Court Assistant