



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.419 OF 2017

**FIDELIS KALYSA WANDERA (SUING AS A REPRESENTATIVE ON BEHALF
OF LEON SCOTT AND VERRAY SCOTT).....PLAINTIFF**

VERSUS

JONATHAN KIHARA.....1ST DEFENDANT

ESTHER MAINA KIHARA.....2ND DEFENDANT

STEPHEN NJENGA NJUGUNA.....3RD DEFENDANT

PETERSON MUCHIRI GACHARI.....4TH DEFENDANT

GEOFFREY KARANJA MBOA.....5TH DEFENDANT

RULING

(Application for injunction; suit by plaintiff claiming that certain properties were fraudulently sold by a donee of a power of attorney; no response filed to the application for injunction; application allowed)

1. This suit was commenced through a plaint which was filed on 8 November 2017. Together with the plaint, the plaintiff filed an application for injunction, to restrain the defendants, from the land parcels Naivasha/Maraigushu Block 18/1814, 1815, 1816, and 1817, formerly comprised in the land parcels Naivasha/Maraigushu Block 18/406 and 398, which properties are in dispute in this case. It is the said application for injunction which is the subject of this ruling. Despite being served, the defendants have not entered appearance and did not file anything to oppose the motion. The only material that I have is therefore that supplied by the plaintiff/applicant.

2. The applicant holds a power of attorney donated by Leon Scott and Verway Scott, who are said to be missionaries from the United States of America. He has averred that in the course of their missionary work, the two missionaries visited Kenya in the year 2008 and decided to buy land in Naivasha for future social purposes. They subsequently purchased two land parcels being Naivasha/Maraigushu Block 18/398 and 406, which properties were transferred into their names on 30 September 2008. On 25 February 2015, they donated a power of attorney to one Jonathan Maina Kihara, the 1st defendant/respondent, so that he may take care of their properties and they gave him the title deeds to the said properties. It is contended that contrary to their instructions, the 1st respondent subdivided the land parcel No. 406 into four parcels which are the present Naivasha/Maraigushu Block 18/1814,1815, 1816 and 1817 . It is said that the 1st respondent thereafter disposed the four subdivisions to the 2nd, 3rd and 4th defendants/respondents without the knowledge of the missionaries and no proceeds of the sale were ever forwarded to them. It is thus pleaded that the properties were sold by way of fraud and among the prayers sought is that the properties were sold through a breach of trust. The plaintiff also seeks an order for the return of the original title deed to the land parcel No. 398.

3. I have gone through the supporting affidavit to the motion and the annexures thereto. I have seen an agreement dated 15 December 2015, vide which the 1st respondent sold the land parcel No. 398 to the 2nd respondent. I however have not seen a search of this property to enable me know its current status for it is not among the documents annexed in the application. I have also seen a mutation form, dated 4 May 2015, vide which the land parcel No. 406 was subdivided into four parcels namely parcels Nos. 1814, 1815, 1816 and 1817. I have seen the annexed searches of these properties which demonstrate that the first two properties are now registered in the name of the 4th respondent and the other two are respectively registered in the names of the 3rd and 5th respondents. They became registered as proprietors on 21 April 2016.

4. The claim that the properties were sold without the permission of the applicant's donors is not controverted as I do not have any reply from the respondents. I am therefore persuaded, from the material so far tendered before me, that the applicant has demonstrated a prima facie case

with a probability of success. If the injunction is not granted, they donors stand to suffer irreparable loss as there may be further dealings with the properties or developments made in them.

5. I therefore make the following orders pending hearing and determination of this suit :-

(a) That an order of injunction is hereby issued stopping the respondents from entering, remaining , or taking or being in possession of the land parcels Naivasha/Maraigushu Block 18/1814, 1815, 1816, 1817 and Naivasha/Maraigushu Block 18/398.

(b) That there is hereby issued an order of inhibition, inhibiting the registration of any dispositions in the register of the land parcels Naivasha/Maraigushu Block 18/1814, 1815, 1816, 1817 and Naivasha/Maraigushu Block 18/398 until further orders of this court.

(c) That the applicant shall have the costs of this application.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 7th day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Bosire holding brief for Mr. Nyaribo for the plaintiff.

No appearance for the defendants.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU