



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO.413 OF 2017**

**JANE WAMBUI KARWENJU.....PLAINTIFF**

**=VERSUS=**

**JOSEPH MAINA NGENYE & ANOTHER.....DEFENDANTS**

**RULING**

1. The Plaintiff/Applicant filed a Notice of Motion dated 21<sup>st</sup> June 2017, in which she sought the following orders.

***1. This Honourable Court be pleased to certify the application urgent, be heard ex-parte and service of the same be dispensed with in the first instance.***

***2. This Honourable Court be pleased to grant a temporary injunction restraining the Defendants/Respondents, their agents, servants, employees and/or representatives or any other person and/or institution from, trespassing into, erecting illegal structures or alienating, disposing off, selling or otherwise interfering with the plaintiff/applicant's building plans, structures thereon, ownership, quiet and peaceful occupation and enjoyment of the suit plot known as PARCEL OF LAND KNOWN AS PLOT NO. B 38 KAYOLE SHOPPING CENTRE (EXTENSION), WITHIN NAIROBI COUNTY, pending hearing, and determination of the application and/or suit herein.***

***3. The Defendants/Respondents and/or their respective or any person /s or institution be and is hereby restrained /stopped from further constructions or sale and interference until determination of the application/suit herein and this order be further enforced by the OCS KAYOLE POLICE STATION.***

***4. An order that the encroachment thereto sale and putting up or building illegal structures thereto be and is hereby declared illegal, unlawful and void and that the plaintiff/applicant is hereby declared the rightful, legal occupant and registered or beneficial owner of the suit plot known as PARCEL OF LAND KNOWN AS PLOT NO. B 38 KAYOLE SHOPPING CENTRE (EXTENSION), WITHIN NAIROBI COUNTY.***

***5. This Honourable Court be pleased to declare the alleged sale between the Defendants/Respondents on the same suit plot known as PARCEL OF LAND KNOWN AS PLOT NO. B38 KAYOLE SHOPPING CENTRE (EXTENSION), WITHIN NAIROBI COUNTY is illegal, null and void.***

***6. The Defendants/Respondents and/or their representatives or any person or institution be ordered to demolish and or remove illegal structures erected on the suit plot known as PARCEL OF LAND KNOWN AS PLOT NO. B38 KAYOLE SHOPPING CENTRE (EXTENSION), WITHIN NAIROBI COUNTY, and the order of this court be enforced with the assistance of the OCS KAYOLE POLICE STATION.***

***7. The costs of this application be provided for.***

2. The applicant contends that on 5<sup>th</sup> February 2010 she purchased a parcel of land known as plot No. B38 (suit property) Kayole Shopping Centre (Extension) from the first Defendant/Respondent. The suit property was duly transferred into her name in the records of Nairobi City County. The applicant further contends that the first Respondent conspired with the second Respondent to whom he claims to have sold the suit property and have destroyed her building materials. That the second Respondent has proceeded to erect some structures on the suit property despite knowledge that the suit property was sold to her by the first Respondent.

3. The first Respondent and second Respondent have opposed the applicant's application based on two separate affidavits both sworn on 11<sup>th</sup> September 2017. The first Respondent states that he sold the suit property to the second Respondent on 12<sup>th</sup> November 2008; that he has

never sold the suit property to the applicant and that the applicant used fake documents in trying to grab the suit property. The applicant is facing a criminal case in Kiambu Chief Magistrate's Court relating to the forged documents a fact which she has not disclosed.

4. The second Respondent contends that he has since sold the suit property to a third party namely John Ngatho Kamau who is not a party to this case. He states that he has been in possession of the suit property which he developed until he transferred the same to John Ngatho Kamau.

5. I have gone through the documents presented by the applicant and the Respondents. I have now to decide whether the applicant has demonstrated whether she has a prima facie case with probability of success and if the mandatory orders she seeks can be granted at this stage.

6. It is clear that the applicant is not the one in possession of the suit property. Though she claims to have purchased the suit property from the first Respondent, the first Respondent has denied this. It has turned out that the applicant is facing a criminal case at Kiambu Chief Magistrates Court relating to the documents of the suit property. The applicant did not disclose this fact. Though she sought leave to file a further affidavit, she did not file any to refute the averments by the Respondent.

7. The suit property has already been sold to a third party who is not a party to these proceedings. I do not therefore see what prima facie case the applicant would have against the Respondents. The applicant is seeking orders of demolition of the structures erected on the suit property. The law is clear that mandatory orders can only be given in clear exceptional cases where it is shown that the Respondent is trying to steal a march on the applicant or where the facts are so obvious and can be dealt with in a summary manner.

8. In the instant case, the applicant is facing criminal charges. She had not disclosed this fact. This in itself disentitles her to any equitable relief of injunction. She is not in possession of the suit property which is now in the hands of a third party. The balance of convenience does not favour her. I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the Respondents.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **5<sup>th</sup>** day of **March, 2018**.

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of date and time of delivery of Ruling.

Court Assistant:

Hilda

**E.O.OBAGA**

**JUDGE**