



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. 282 OF 2017**

**PAMELA NYANDIKO & 8 OTHERS.....PLAINTIFFS**

**VERSUS**

**JONATHAN K NZIOKA & 3 OTHERS.....DEFENDANTS**

**RULING.**

1. The plaintiff / applicant filed a notice of motion dated 26<sup>th</sup> April 2017 in which they seek the following orders;-

**1. Spent**

**2. Spent**

**3. That a temporary order of injunction be issued restraining the 3<sup>rd</sup> defendant/respondent and/or his employees ,agents, servants, charges, assigns and any other persons howsoever acting under the 3<sup>rd</sup> defendants/respondent's directions from entry into, trespassing, taking possession of, occupying ,selling ,advertising for sale, transferring ,charging further churching, leasing, sub-dividing, wasting ,alienating ,demolishing or dealing in any manner howsoever with that property known as Nairobi/Block/118/126 together with the developments therein, pending the hearing and determination of this suit.**

**4. Spent**

**5. That an order of Prohibition be issued prohibiting the 4<sup>th</sup> Defendant/Respondent from registering any interest or making any entries with the effect of transferring that parcel of land known as Nairobi/Block/118/126 whatsoever, pending the hearing and determination of this suit.**

**6. That costs of this application be provided for.**

2. The subject matter of this suit and application is LR No.Nairobi/Block 118/126 (suit property) which is registered in the name of the third defendant /respondent. The suit property was a subdivision of LR No. 11594 which was owned by Drumvale Farmers' Cooperative Society Limited. The suit property had been allocated to the first defendant/respondent. The first defendant/respondent sold the same to the third respondent on 27<sup>th</sup> May 2001. The first respondent later processed and obtained certificate of lease in his name after which he transferred the same to the third respondent in 2017.

3. The applicants contend that they purchased portions of the suit property from the second respondents on various dates between the year 2014 and 2015; that they entered into possession and some have constructed houses in which they are staying with their families. On 10<sup>th</sup> April 2017 , the applicants saw some strangers who came to the suit property and started taking measurements. On the following day , a village elder went to the suit property and informed the applicants that he had received a phone call from an officer from Nairobi City County in connection with a complaint lodged there against the second respondent .

4. The applicants became suspicious and they sought legal advice. They were advised to carry out an official search. The results of the search showed that the suit property was in the third respondent's name. the applicants contend that the transfer of the suit property from the first respondent to the third respondent was done fraudulently; that the third respondent has threatened to evict them from the suit property.

5. The applicants' contention is that the suit property had been sold by the first respondent to the second respondent and therefore the transfer of the same land by the first respondent to the third respondent was fraudulent.

6. The first and third respondents have opposed the applicants' application through two separate affidavits both sworn on 18<sup>th</sup> May 2017. The third respondent contends that he bought the suit property from the first respondent on 27<sup>th</sup> May 2001. He later had the property transferred to him and therefore he cannot be enjoined from his own property. The first respondent on his part states that he sold the suit property to the third respondent who is now registered as owner of the same. He denies ever selling the same land to the second respondent.

7. The second respondent on his part contends that he bought the suit property from the first respondent on 16<sup>th</sup> August 2013. Prior to the purchase, he went to Drumvale farmers' Co-operative Society who confirmed that the suit property had been allocated to the first respondent. He paid kshs.3000,000/= for the suit property which was about one acre. He applied for subdivision which was allowed. He subdivided the suit property into 15 plots of 40x60 each and sold the same to third parties who have constructed on the same.

8. The second respondent states that he has filed a separate suit against the first and third respondents and others in ELC case No.293 of 2017. He prays that an order of status quo be issued pending the determination of this case which should be consolidated with the one he filed subsequent to this one.

9. I have carefully considered the applicant's application as well as the opposition thereto by the first and second respondents. I have also considered the submissions by the first and third respondents as well as those of the applicants. I have now to decide whether the applicants have demonstrated that they have a prima facie case to warrant issuance of injunction

10. The principles for grant of a temporary injunction were set out in the celebrated case of **Giella Vs Cassman Brown & Co.Ltd (1973) 358**. First, an applicant must demonstrate a prima facie case with probability of success. Second, an injunction will not normally be granted unless otherwise the applicant will suffer injury which will not be compensated in damages. Third, if the court is in doubt, it will decide the application on a balance of convenience.

11. A prima facie case in a civil application was stated in the case of **Mrao Vs First America Bank of Kenya Ltd & 2 others (2003) KLR 125** as follows:-

***“ A prima facie case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.***

12. In the instant case the suit property is registered in the name of the third respondent. The third respondent did not sell the land to the applicants. The applicants claim that they bought their respective plots from the second respondent. The first respondent had denied ever selling the suit property to the second respondent. Admittedly the second respondent has been questioned by police regarding the suit property. I have looked at the documents presented before the court with a view to establishing whether a prima facie case has been made out by the applicants. At this stage, the court is not expected to conduct a mini trial by closely examining the documents. This is a matter which should be left to trial in the main hearing.

13. With the above background in mind, I do not find that the rights of the applicants have been infringed by the third respondent as to call him to rebut the allegations against him. To this extent, I do find that the applicant's application which seeks to enjoin the third respondent from dealing with his property lacks merit. If there is any loss which the applicants will suffer, that loss is capable of being compensated in damages. I proceed to dismiss the applicants' application with costs to the first and third respondents.

It is so ordered.

**Dated, Signed and Delivered at Nairobi this 9<sup>th</sup> day of April 2018.**

**E.O .OBAGA**

**JUDGE**

In the presence of :-

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Court Assistant:

**E.O .OBAGA**

**JUDGE**