



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC NO. 272 OF 2017**

**SHADRACK ONGARO OSORO**

***Holding specific power of Attorney suing on behalf of***

**PIUS MATUNDA ONGAGA AND**

**CHRISTINE MEMBA ONGONDO.....PLAINTIFFS**

**=VERSUS=**

**JOHN MWANGI & ANOTHER.....DEFENDANTS**

**RULING**

1. The applicant who is a holder of a power of attorney from Pius Matunda Ongaga and Christine Mema Ongondo filed a Notice of Motion dated 21<sup>st</sup> April 2017 in which he sought the following orders.

***1. Spent***

***2. That this Honourable Court be pleased to grant order inhibiting any dealing with the suit property more particularly known as Plot Number S 112 share certificate number 7052 Embakassi Ranching Company Limited pending hearing and determination of this application.***

***3. That this Honourable Court be pleased to issue a temporary injunction against the defendants/respondents by themselves, their servants and/or agents or any person acting by or through them from entering and/or trespassing ,encroaching, alienating, selling, offering for sale, sub-dividing, putting up construction or in any way interfering with the parcel of land known as Plot Number S 112 Share Certificate number 7052 Embakassi Ranching Company Limited being the suit property pending hearing and determination of this suit.***

2. The applicant contends that the donors of the power of attorney are his nephew and his wife respectively. On 19<sup>th</sup> June 1999, the two purchased a property known as plot No S 112 (suit property) from Tabitha Wanjiru Njau who was a member of the second respondent company. The two were given non-member share certificate number 7052. They planted sisal round the plot and the same was cultivated until 2015.

3. On 13<sup>th</sup> October 2016, the applicant visited the suit property and found a building being put up. He reported the matter to the area chief who referred him to Embakasi Police Station. He again made a report at Ruai, police station where the police asked him to report to the second respondent. He reported the matter to the second respondent where he was asked to raise Kshs.20,000/= for a site visit. He later prepared a bankers cheque for Kshs.20,000/= which cheque the second respondent refused to take which aroused his suspicion that there could be something wrong.

4. The first respondent has opposed the applicant's application through a replying affidavit sworn on 27<sup>th</sup> June 2017 . He states that in 2016 he went to the offices of the second respondent where he enquired whether they had a plot to sell. He was asked to come later after their surveyor had gone through the map to see if there was any plot available. When he went back, he was told that there was a plot available which was going for Kshs.1,300,000/= . He paid for the plot in two installments and was given a non-member certificate for plot No. V 7909.

5. He paid kshs.20,000 /- for site visit and a further kshs.50,000/= for beacon certificate . He was given a go ahead to start constructing after paying Ksh. 158,000= for stamp duty and transfer fees. When he enquired from the second respondent what he was expected to do in view of this case which had been filed, he was asked to go on. He went on with construction which he finished. He has now moved in into his

complete bungalow which is on the suit land. He contends that he has incurred over four million shillings in constructing his house.

6. The parties were asked to put in written submissions. The applicant filed his submissions on 18<sup>th</sup> October 2017. The first respondent filed his submissions on 23<sup>rd</sup> November 2017. I have considered the applicants application, the opposition thereto as well as the submissions by the parties. I now have to consider whether to grant an injunction and the inhibition orders as prayed.

7. The applicant is seeking a temporary injunction to stop the first respondents from constructing or interfering with the suit property. The applicant discovered the trespass to the suit property on 13<sup>th</sup> October 2016. He did not take any step to stop construction until after six months later when he filed this application. As at this time, the first respondent had already completed constructing the house. When the first respondent was replying to the applicant's application, he was already in the house as per the photographs annexed to the replying affidavit.

8. The application for injunction has therefore been overtaken by events. An injunction cannot be given to prevent that which has already happened. The applicant is also seeking an order of inhibition. There is no evidence that the suit property is registered. Granting an order of inhibition will therefore not assist. There are serious conflicts of facts in this matter. The applicant is claiming that the suit property is S 112 whereas the first respondent claims that he is on plot known as V 7909. This being the case the best order which should be given is that of maintenance of status quo. This was the holding of the court of Appeal in **Ougo & another Vs Otieno (1987) KLR 364 at 365** where the Court of Appeal stated that where there are serious conflicts of facts, the court should give an order of status quo until the dispute is heard at the trial. I therefore order that the status quo be maintained until hearing and determination of this case. For avoidance of doubt, the status quo is that it is the first defendant /respondent who is in possession. There is however a rider that the respondents should not take any steps towards the registration of the suit property in the name of the first respondent or any other name pending hearing and determination of the suit. Costs of this application shall be costs in the suit.

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 :-

Mr Kamau for Mr Munga for 1<sup>st</sup> Defendant

Court Assistant: Hilda

**E.O .OBAGA**

**JUDGE**