



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC NO. 19 OF 2018

MARGARET ORANGO & ELIZABETH GACHERU (SUING BEHALF

OF THE ESTATE OF JARED ORANG'O EDMOND.....PLAINTIFFS

=VERSUS=

JOHANES BOYI OKOBA & ANOTHER.....DEFENDANT

RULING

1. The plaintiffs/applicants are the administratrix of the estate of the late Jared Orang'o Edmond (deceased) who died on 4th November 2015. At the time of the death of the deceased, the deceased was the registered owner of LR No. Nairobi Block 111/78 at Komarock in Nairobi (suit property).
2. On 23rd March 2016, the first respondent fraudulently transferred the suit property into his name after which he transferred the property to the second respondent. The first applicant discovered the fraud when the second respondent tried to distress for rent against the tenants on the suit property on the grounds that it had become the registered owner.
3. The first respondent was arrested and arraigned before the chief magistrate's court where he is facing among other charges forgery. It is on this basis that the applicants came to court for injunction order to preserve the suit property until this case is heard and determined.
4. The applicants contend that the deceased never transferred the suit property during his lifetime. It is the first respondent who fraudulently had it transferred into his name before he quickly transferred it to the second respondent which is now the registered owner of the suit property.
5. The second respondent opposed the applicants' application based on a replying affidavit sworn on 2nd February 2018. The second respondent through one of its directors states that it purchased the suit property from the first respondent after carrying out due diligence ; that it was not party to the alleged fraud by the first respondent and therefore as an innocent purchaser for value , its right to the suit property is protected.
6. I have considered the applicants' application as well as the opposition to the same by the second respondent. I have also considered the submissions filled by the parties. This being an application for a temporary injunction, I have to decide whether the applicants have met the threshold for grant of an injunction. One of the important considerations is demonstration of a prima facie case.
7. In the instant case, the applicants have demonstrated that the suit property was in the name of the deceased before his death. The first respondent who transferred the suit property to himself before transferring it to the second respondent is not the administrator of the estate of the deceased. He could not therefore legally transfer property of a deceased person without obtaining letters of administration.
8. This Court is not dealing with the issue of ownership at this stage. It is only examining whether on the material before it, the applicants have demonstrated that they have a prima facie case with probability of success. I find that on the material before me, the applicants have demonstrated that they have a prima facie case with probability of success. They are entitled to injunctive orders to preserve the suit property until the dispute herein is heard and determined. I therefore allow the Notice of Motion dated 22nd January 2018 in terms of prayer (3) and (4).

It is so ordered.

Dated, and Signed at Nairobi on this 31st day of July 2018.

E.O.OBAGA

JUDGE

Delivered at Nairobi on this 31st day of July 2018

In the Presence of:-

Mr Kitheka for the Applicant

Mr Kirimi for the Respondent

Court Assistant: Hilda

B M EBOSO

JUDGE

31/7/2018