



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**E.L.C. CASE NO. 52 OF 2015**

**LEISI OLE SAISOO.....PLAINTIFF/APPLICANT**

**VERSUS**

**KAUSH RARUKIA SUPEYO.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**LEIYIAN TUMUTI**

**T/A LENANA SURVEYORS.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The Application before me is the one dated 23<sup>rd</sup> February, 2015 seeking for the following orders:

- (1) That, pending the hearing and determination of this suit or until further orders, a temporary injunction do issue restraining the 1<sup>st</sup> defendant/respondent by himself, his servants, agents or otherwise howsoever from selling, sub dividing for sale, wasting, damaging, alienating or trespassing upon the whole or any portion of the land comprised in KAJIADO/KIPETO “A”/5486;**
- (2) That this Honourable Court do inhibit the registration of any dealing(s) with the parcel of land comprised in KAJIADO/KIPETO “A”/5486 pending the hearing and determination of this suit or until further orders.**
- (3) That cost of this application be provided for.**

The Application is supported by the Affidavit of the Plaintiff who has deponed that he is the registered owner of land known as Kajiado/Kipeto “A”/4752 measuring 17.40 Ha which was subdivided to create plots 5486 and 5487 (*the suit property*); that sometime in the late 1990’s and early 2000, he entered into an oral agreement with the 1<sup>st</sup> Defendant to sell to him a portion of his land measuring 9.7 Ha and that he surrendered to the 1<sup>st</sup> Defendant the original Title Deed for the purpose of subdividing the land.

According to the Applicant, the Defendants took advantage of his illiteracy and fraudulently transferred an extra 6.1 Ha to the 1<sup>st</sup> Defendant and that in the absence of a written contract, the transaction purporting to transfer the suit property to the 1<sup>st</sup> Defendant is null and void.

The Plaintiff has deponed that he never appeared before the Land Control Board and that the Defendant’s

actions are fraudulent in nature.

In his response, the 1<sup>st</sup> Respondent deponed that the Plaintiff agreed to sell to him 14.97 Ha and not 9.7 Ha as alleged; that the Plaintiff later on declined to transfer the property to him; that he was prevailed upon by the elders to accept 6.072 Ha and not to seek for a refund of the purchase price and that he hived from the suit property 6.072 Ha as per the decision of the elders.

According to the Defendant, the 6.072 Ha that he hived off from the Plaintiff's land gave rise to KJD/KIPETO "A"/5486.

The 1<sup>st</sup> Defendant has deponed that after paying the purchase price, the Plaintiff transferred the suit property to him after signing all the transfer documents and gave him a copy of his National Identity Card and the PIN certificate.

Having admitted that he entered into an agreement with him, the 1<sup>st</sup> Defendant stated that the Plaintiff cannot hide behind legal technicalities to defeat his claim.

The Plaintiff's advocate filed submissions which I have considered. The Defendant's advocate did not file his submissions.

Although the Plaintiff has admitted that he sold a portion of his land to 1<sup>st</sup> Defendant, he has averred that the 1<sup>st</sup> Defendant has acquired an extra 6.1 Ha of his land.

The 1<sup>st</sup> Defendant's position is that although he had purchased the entire land belonging to the Plaintiff, the elders prevailed upon him to accept 6.1 Ha being a portion of the Plaintiff's land.

The mutation forms annexed on the Plaintiff's Affidavit shows that the original parcel of land was subdivided into three portions measuring 12.48 Ha, 1.22 Ha and 6.1 Ha.

Other than the 6.1 Ha which is currently registered in favour of the 1<sup>st</sup> Defendant, it is not clear to this court the people who are registered as the proprietors of the other two portions.

The Plaintiff has already raised the issue of the legality of the Title Deed that was issued to the 1<sup>st</sup> Defendant in view of the provisions of **Section 3(3)** of the **Law of Contract** and **Section 6** of the **Land Control Act**.

**Section 3(3)** of the **Law of Contract Act** provides that a suit cannot be brought upon a contract for the disposition of an interest in land unless the contract is in writing, signed by all the parties and the signature of each party has been attested by a witness.

**Section 6(1)** of the **Land Control Act** on the other hand provides that all transfers and sub-divisions in respect to agricultural land must be sanctioned by the Land Control Board.

The Plaintiff's suit is therefore predicated on those provisions of the law. The applicability and relevance of these provisions in this matter is important.

It is with these provisions of the law in mind, and the uncertainty of the registered proprietors of the other two portions of land that were hived from portion 4752 that leads me to make a finding that the Plaintiff/Applicant has established a *prima facie* case with chances of success.

Unless the orders of injunction are granted, the Plaintiff is likely to lose the entire land thus making him suffer irreparable injury that cannot be compensated by damages.

For those reasons, I allow the Application dated 23<sup>rd</sup> February, 2015 as prayed.

Dated, signed and delivered in **Machakos** this 27<sup>th</sup> **January, 2017.**

**O. A. ANGOTE**

**JUDGE**