



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT CHUKA
CHUKA ELC CASE NO 193 OF 2017
FORMERLY MERU ELC CASE NO.261OF 2016

CHARLES MWENDWA NDIGA.....1ST PLAINTIFF

ABISHAG KINA MWENDWA.....2ND PLAINTIFF

VERSUS

KAJOGO KATHENYA.....1ST DEFENDANT

JONATHAN KIAMBI MUKETHA.....2ND DEFENDANT

KITHAKA WA MBERIA.....3RD DEFENDANT

RULING

1. This application seeks orders:

1. That this application be certified urgent and service be dispensed with in the first instance.
2. That an order of inhibition do issue inhibiting any dealings with land parcel No. MERU SOUTH/KATHWANA/985 pending inter-partes hearing of the application and subsequently pending the hearing and determination of this suit.
3. That an order of temporary injunction do issue restraining the Defendants/Respondents by themselves, their agents or servants from howsoever interfering with the Plaintiffs' quiet user, possession and occupation of 2 Acres on land parcel No. MERU SOUTH/KATHWANA/985 pending inter-partes hearing of the application and subsequently pending the hearing and determination of this suit.
4. That costs be provided for.

2. It is supported by the affidavit of ABISHAG KINA MWENDA and has the following grounds:

1. That the Plaintiff lawfully bought the suit land from the 1ST Defendant and paid the full consideration price.

2. That the 1st Defendant fraudulently and with the intention of defeating the Plaintiffs' claim caused the suit land to be registered in the name of the 2nd and 3rd Defendants.

3. That the 2nd and 3rd Defendants are not bonafide purchasers for value without notice.

4. That the 2nd and 3rd Defendants are now making attempts to dispossess the Plaintiffs the suit land.

5. That the Plaintiffs have been in possession and user of the suit land since the year 2007 when they purchased the same.

3. On 15.3.2017, Mr. Kariuki told the court that he was unable to trace the 2nd and 3rd defendants.

4. The 1st defendant told the court that he is the one who sold the suit land to the 1st defendant and then later on sold the same land to the 2nd and 3rd defendants. He told the court that the 2nd and 3rd defendants, when they gave him money knew that the land had already been sold to the 1st and 2nd plaintiffs. He did not oppose this application.

5. In the interests of Justice, I find it necessary to confirm prayer 2 in the application. Prayer 3 is not granted as this court finds it difficult to restrain registered owners of land from accessing their land.

6. The plaintiffs should endeavour to serve the suit against the 2nd and 3rd defendants so that directions to the parties to comply with order 11, CPR can be given. This will allow the suit to be heard on its merits.

7. Pre-trial conference and directions on 12.7.2017.

8. It is so ordered.

Delivered in open court at Chuka this 15th day of March, 2017 in the presence of:

CA: Ndegwa

Manasses Kariuki for the plaintiff

Kajogo Kathenya – 1st defendant

P. M. NJOROGE,

JUDGE.