



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 152 OF 2017

J S OLE S.....PLAINTIFF/APPLICANT

-VERSUS-

T W N.....1ST DEFENDANT

M S S.....2ND DEFENDANT

P N S.....3RD DEFENDANT

DISTRICT LAND REGISTRAR-NAROK.....4TH DEFENDANT

RULING

The Application before me is dated the 20th December, 2016 which is brought by way of Notice of Motion seeking inter alia an order of injunction restraining the 1st, 2nd and 3rd Respondents from dealing, transferring, disposing of in any manner interfering with all the parcels of land known as **[Particulars withheld]** and **[Particulars withheld]** respectively.

The Application is premised on the grounds that the Applicant is the legal owner of the two parcels of land and the 1st Respondent fraudulently transferred the said parcels of land to the 2nd and 3rd Respondents. The Applicant further contends that the Respondents are in the process of selling and/or transferring the two parcels of land albeit without stating to whom the said parcels of land are being transferred to.

The Application is further supported by the Affidavit J S Ole S and the annexures thereto marked **“JSOS I TO JSOS V”**.

The Applicant states that sometime in December 2000 he had asked the 1st Respondent to marry him after the 1st Respondent allegedly fraudulently misrepresented to the Applicant she was a free woman and not married at the time or previously and on the strength of that, the couple solemnized their marriage at **[Particulars withheld]** ACK Church.

The Applicant contends that he transferred the two parcels of land as token of his love and affection to the Respondent subsequent to the marriage.

While the couple lived as husband and wife, the 1st Respondent deserted their matrimonial home after a Mr. N came to the couples homestead and it was at this time that he realized that the 1st Respondent was married to another man.

Subsequent to the above, the Applicant filed the present application after the Respondent left the matrimonial home and transferred the parcels of land to the Respondent.

The 1st Respondent opposes the Application on behalf of herself and on behalf of the 2nd and 3rd Respondents who are her daughters by way of a Replying Affidavit sworn on the 31st January, 2017 and filed in court on 14th February, 2017.

The 1st Respondent contends that she purchased the parcel of land between 1998 and 2002 at the rate of kshs. 50,000/per acre- from the Plaintiff and he later signed the transfer after obtaining the consent of the Land Control Board.

The 1st Respondent contends that it was after she purchased the land that the Plaintiff moved into her house upon their marriage and that she lost documents evidencing the purchase in a fire that gutted her house in 2003.

I have read the Application and the Supporting Affidavit and the Respondent's Affidavit. I have listened to submissions by counsel for the parties and it is my considered view that the issue for determination at this interlocutory stage are the following:-

1. Whether the Plaintiff/Applicant has established a prima facie case
2. Whether the Plaintiff/Applicant had gifted the Respondent the parcels of land
3. Whether the Respondent herein purchased the said land from the Applicant

The above issues can only be determined upon hearing oral evidence and calling of witnesses at full trial.

The parties competing interest can only be addressed during the trial and in view of the above, I am inclined to preserve the suit land pending the hearing and determination of the suit and thus allow the application.

Cost of the application shall be in the cause.

Dated, Signed and Delivered in open court at **NAROK** on this **6th** day of **April, 2017**

Mohammed Noor Kullow

Judge

In the presence of:-

Mr. Muhuhu for the Defendant/Respondent

N/A for the Plaintiff/Applicant

CA:Timothy