



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**ELC CASE NO. 36 OF 2017**

**JOEL KANGETHE IKURO**

**JAMES WAMWATI MAMBO (Suing as administrators**

**of the Estate of George Mambo, (deceased).....PLAINTIFFS**

**=VERSUS=**

**SIMON MUNYI THEURI..... 1<sup>ST</sup> DEFENDANT**

**WILLIE MAHUGU NDABI.....2<sup>ND</sup> DEFENDANT**

**REGISTRAR OF TITLES.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The applicants are the administrators of the estate of the late **George Mambo (Deceased)** who was the registered owner of **LR No.36/111/215** (suit land) situated at Eastleigh Section III. The applicants filed a suit against the three respondents on 19<sup>th</sup> January 2017. The applicants contemporaneously filed a notice of motion dated 13<sup>th</sup> January 2017 in which they sought among other prayers injunctive orders against the respondents.

2. The applicants contend that the deceased became the registered owner of the suit land on 11<sup>th</sup> May 1971 when an indenture of conveyance was registered in his favour. The deceased took a mortgage and offered the suit land as security. When the mortgage was repaid, there was an indenture of re-conveyance registered. The deceased took possession of the property and put in tenants who were paying him rent until he died in 1980. His wife took over and continued paying various utility bills like electricity and received rents from the property.

3. On 28<sup>th</sup> November 2016, the applicants were informed by the tenants in the suit property that the second respondent in the company of the OCS Pangani Police Station had delivered a letter to the suit premises which letter indicated that the second respondent was the registered owner of the suit property. This aroused the applicants who went and did a search at the Lands Office which search revealed that the second respondent was the registered owner of the suit property. Further investigations revealed that the second respondent bought the suit property from the first respondent in the year 2013. What the applicants found interesting is that all documents pertaining to the ownership of the deceased had disappeared from the Lands office and that the search revealed that the first respondent had an indenture

of conveyance dated 11<sup>th</sup> May 1971 just as the one held by the deceased. This is what forced the applicants to come to court.

4. The applicants contend that they have all the original documents relating to the ownership of the suit property. The applicants contend that the respondents with the assistance of the OCS Pangani want to defraud them of the deceased's land. That the OCS Pangani is not the one who has jurisdiction in the area where the property is situated and that he has been threatening them with arrest. The applicants had lodged a complaint with the Directorate of Criminal Investigations which investigations have not been concluded.

5. The second respondent opposed the applicants applications through a notice of Preliminary Objection and replying affidavit filed in court on 27<sup>th</sup> February 2017. The second respondent contends that the applicants have no locus standi to bring both the application and the suit on the ground that they are not the administrators of the estate of the deceased. That the applicants are land fraudsters who are wanted by police over land fraud cases and that this case was filed to shield them from criminal prosecution for forcible detainer of the suit property. That he purchased the suit property for Kshs.16,000,000/- and that during the conveyancing process, he discovered that a number of vital documents had disappeared from the Lands office.

6. I have carefully examined the documents presented in this application. I have also considered the submissions prepared by the counsel for the applicants and the second respondent. The issues which emerge for determination are as follows:-

***(a) Whether the applicants have locus standi to bring up this suit as well as the application.***

***(b) Whether the applicants have demonstrated that they have a prima facie case against the respondents to warrant issuance of the orders prayed for in the application.***

7. On the first issue, the second respondent is contending that the applicants have no locus standi to bring up the suit as well as the application. The second respondent argues that what the applicants have annexed is not a grant but form 60 under the Law of Succession Act. I have looked at the document and find that it is indeed a document required in form 60 which calls for any objections to giving of grant. However there is a further affidavit by the Advocate for the applicants explaining that they inadvertently annexed a wrong document. The further affidavit has annexed the grant issued on 4<sup>th</sup> April 2017.

8. One may argue that as at the time the applicants filed this suit they had not obtained a grant. This may be so but the fact remains that the applicants had started the process of getting letters of administration which they have now obtained. Justice demands that the court should do substantive justice as opposed to technical justice. It does not matter the time of taking letters of administration. The applicants may have not seen the need of taking such letters until their deceased father's property was threatened. I therefore do not find any merit in the Preliminary objection which is hereby overruled.

9. On the issue as to whether the applicants have demonstrated that they have a prima facie case, I have examined the documents presented before me. The documents show that the deceased was registered owner of the suit property since 11<sup>th</sup> May 1971. There have been tenants who have been paying rent. There are documents to show that rates and rents have been paid by the family of the deceased. The second respondent has only an indenture of conveyance. Other than this, he has no any other documents to support his ownership claims. On the material presented to me, I find that the applicants have a prima facie case with probability of success.

10. Even on a balance of convenience. I find that the same tilts in favour of the applicants who are in possession of the suit property. I therefore find that this is a good case where the orders sought should be granted so as to preserve the property until the hearing and determination of this suit. The upshot of this is that the applicants notice of motion dated 13<sup>th</sup> January 2017 is allowed in terms of prayer six (6). Prayers three (3) and four (4) which had been given on temporary basis are hereby confirmed. The costs

of this application shall be borne by the first and second respondents.

It is so ordered.

Dated, signed and delivered at **Nairobi** on this **14<sup>th</sup>** day of **June** 2017

**E.O .OBAGA**

**JUDGE**

In the presence of:-

Mr. Gichuki for Plaintiff/Applicant

Mr. Makori for Mr. Ondabu for 1<sup>st</sup> and 2<sup>nd</sup> defendant/respondent

Court clerk - Hilda