



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**ELC NO. 1065 OF 2016**

**STEPHEN KAMAU KINYANJUI.....1<sup>ST</sup> PLAINTIFF**

**SUSAN NJAMBI KAMAU.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JAMES ESBON MWANGI MAIGUA.....1<sup>ST</sup> DEFENDANT**

**GEORGE AMBOGO MARITA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The applicants are holders of a grant of letters of administration *ad litem* in respect of the estate of the late **Kamau Gikonyo (Deceased)** who was a shareholder of New Roysambu Housing Company Limited (the company). By virtue of the deceased's shareholding in the company, the deceased was allocated Plot No. 347 after a process of balloting. The plot later became LR No. 116/999. The deceased died in 1985 before the plot could be registered in his name.
2. The plot which remained undeveloped remained in the hands of the deceased's widow who also died leaving the plot in the hands of her children. In or around 2016, the applicants learnt that some strangers had trespassed on to the plot and were digging trenches. They made inquiries and found out that the respondents were laying claim over the property. They moved to court and obtained limited letters of administration for purposes of filing the present suit.
3. The applicants filed the present application in which they sought injunctive orders against the respondents restraining them from any interference with the suit plot and further orders restraining the first respondent from transferring the suit plot to third parties pending the hearing and determination of the suit herein.
4. The applicants contend that neither the deceased nor their late mother sold the suit plot to anyone and that the plot which is currently registered in the name of the first respondent was done so fraudulently as the suit plot has never been sold to any person.
5. The first respondent has deponed in his affidavit sworn on 3<sup>rd</sup> April 2017 that he was approached by an estate agent called Kihiu Mugo in November 2009 and informed that there was someone who was selling a plot at Zimmerman in Nairobi. He was informed that the seller was the second respondent.
6. The first respondent made arrangements for the second respondent to avail himself at the offices of

Roysambu Housing Co-operative Society Limited. During the meeting at the Society's offices, it was discovered that the second respondent had already sold the same plot to another purchaser. The officials of the society advised him to deposit the purchase price with the society and that the earlier purchaser would be refunded the amount he had paid from the deposited amount.

7. The society officials then made transfer documents directly from the deceased's name to his name. He took the documents to Lands office where the plot was registered in his name. He contends that he did not know that he was purchasing property of a deceased person. He contends that he was misled by officials of the society who should be enjoined in the suit so that they can indemnify him.

8. The second respondent in his affidavit sworn on 13<sup>th</sup> October 2016 depones that he bought the suit plot from some three individuals who presented themselves as administrators of the estate of the deceased. That he later intended to sell the plot to someone else who could not go through the deal. He looked for a second buyer whom he found in the first respondent to whom he sold the property.

9. The second respondent contends that he has tried to look for the persons who sold the plot to him in vain. That he does not know that the plot has since been registered in the first respondent's name whom he claims he cannot find. He pleads that he be given time to sort out the issue with the first respondent out of court.

10. I have carefully considered the applicant's application as well as the affidavits by the two respondents. There is no contention that the suit property belonged to the deceased. There is also no contention that neither the deceased nor his late wife sold the suit plot. The documents produced before this court in form of affidavits show that the deceased is the one who was allocated the suit plot.

11. The suit plot is now registered in the name of the first respondent. The first respondent has stated on how he came to have the plot registered in his name. The two respondents are in agreement that they did not know that they were dealing in a property of a deceased person.

12. It is clear that there was something wrong from the beginning. People who had no letters of administration purported to sell land on the pretext that they had power to do so. Whoever was purchasing the plot did not question these persons and he now claims that he was ignorant of the process of succession. The other person who finally bought the land and had it registered in his name now claims that he was lured into the deal and that he was misled by the society officials. This is a clear case which the applicants have demonstrated that they have a strong *prima facie* case against the respondents.

13. I allow the applicant's notice of motion dated 1<sup>st</sup> September 2016 in terms of Prayers three (3), five (5), seven (7) and nine (9).

It is so ordered.

Dated, signed and delivered at **Nairobi** on this **12<sup>th</sup>** day of **June** 2017.

**E.O .OBAGA**

**JUDGE**

In absence of Advocates for the Parties who were aware of the date and delivery of ruling.