



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 350 OF 2017**

**CHARLES RAY COULSTON.....1<sup>ST</sup> PLAINTIFF**

**DARLENE ANN COULSTON.....2<sup>ND</sup> PLAINTIFF**

**FRANCIS MBUVI MAITHIA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**HENRY KIARIE WAWERU.....1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Plaintiffs seek a temporary injunction to restrain the Defendants from selling, disposing of, transferring, encumbering or interfering with the land known as L.R. No. 36/880/1 Nairobi (“the Suit Property”) until this suit is determined.

The Plaintiffs are trustees of “Made In The Streets” a registered society and charitable children’s institution. The Plaintiffs acquired the Suit Property and were registered as the proprietors on 23/4/1999. They developed the Suit Property and run a rehabilitation centre for street children, a vocational training centre and a playfield for the street children. The Plaintiffs discovered on 22/5/2017 that the original title document for the Suit Property was missing and on conducting a search at the Lands Office learnt that the Suit Property was transferred to the 1<sup>st</sup> Defendant on 31/12/2015 with the consideration indicated as Kshs. 25,000,000/= . They reported the matter to the police to investigate the fraudulent transfer of their Suit Property and also filed this suit.

The court granted interim orders and directed the Plaintiffs to serve the Defendants. The 1<sup>st</sup> Defendant could not be traced for service. On the Plaintiffs application, an order for substituted service was made and the 1<sup>st</sup> Defendant was served vide an advertisement which appeared in the *Daily Nation* of 27<sup>th</sup> June 2017. The Defendants have not entered appearance or filed any papers.

The question is, do the Plaintiffs meet the criteria for the grant of the temporary injunction?

The Plaintiffs urge that the Defendants fraudulently transferred the Suit Property and that they will suffer irreparable harm unless the orders are granted.

The Plaintiffs who run a rehabilitation centre for street children on the Suit Property will suffer irreparable harm if the Suit Property is sold, transferred or encumbered by the Defendants before this suit

is heard and determined as they can be evicted from the Suit Property and the operations of the street children rehabilitation centre paralysed or brought to a halt. Such damage cannot be compensated by an award of damages.

The court is persuaded that the orders sought ought to issue. The application dated 25<sup>th</sup> May 2017 is allowed with costs to the Plaintiffs.

Dated and delivered at Nairobi this 24<sup>th</sup> day of July 2017.

**K. BOR**

**JUDGE**

In the presence of: -

Ms Kayoi for the Plaintiffs

No appearance for the Defendants

Mr. V. Owuor- Court Assistant