



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

E&L CASE NO 51 OF 2017

CHABARI MUNGANIAPLAINTIFF /APPLICANT

VERSUS

FELIX MURITHI KIRAI.....1ST DEFENDANT/ RESPONDENT

GUARANTY TRUST BANK

(KENYA) LTD.....2ND DEFENDANT/ REPSONDENT

R U L I N G

1. The Notice of Motion dated 1st February, 2017 seeks the following orders:-

(1) That this application be certified urgent and the same be heard as a matter of priority.

(2) That this Honourable Court be pleased to issue orders of inhibition , inhibiting any dealing with Land Parcel LR. No: **ABOTHUGUCHI/KIIJA/740** pending the hearing and determination of this application.

(3) That this Honourable Court be pleased to issue orders of inhibition, inhibiting any dealings with land Parcel L.R NO. **ABOTHUGUCHI/KIIJA/740** pending the hearing and determination of this suit.

(4) That costs for and incidental to this application be provided for.

2. The application is based on the grounds that:-

i. That the Plaintiff/Applicant is the registered owner of Land Parcel LR. NO. **ABOTHUGUCHI/KIIJA/740**.

ii. That the Plaintiff has never had any dealings with the Defendants/Respondents who have placed a legal charge on the plaintiff's land parcel No. **ABOTHUGUCHI/KIIJA/740** in favour of the 2nd Defendant/Respondent by forging the Plaintiff's signature on the charge document.

iii. That the Plaintiff/Applicant has never authorized the Defendants/Respondent to charge his parcel of land as a guarantor to the 1st defendant as the charge was acquired fraudulently and the plaintiff is in imminent fear that the 2nd defendant may exercise its chargee power of sale depriving the plaintiff of his land.

iv. That unless the orders sought are granted the Plaintiff/Applicant will suffer irreparable damages

as he will lose his land over a charge acquired fraudulently.

3. The Applicant CHABARI MUNGANIA has also filed a supporting affidavit where he has deponed as follows:-

(1) That he is adult of sound and the Plaintiff/Applicant herein hence competent to make and swear this affidavit.

(2) That he is the registered owner of land parcel No. ABOTHUGUCHI /KIIJA/740 (*Annexed and marked CM '1' is a copy of the official Search Certificate*).

(3) That he has never had any dealings with the defendants over my land parcel LR. No. Abothuguchi/Kiija/740.

(4) That he received a Demand Notice from FINA bank the predecessor of the 2nd Defendant/Respondent informing him of their intention of exercising chargee power of sale over his land over a charge registered over the suit land.

(5) That he conducted a search at the Meru land's office where he found out that there was a charge in favour of the 2nd defendant registered over his land parcel LR. NO. ABOTHUGUCHI/KIIJA/740.

(6) That he reported the matter at Directorate of Criminal Investigations Meru Office who conducted their investigation at the Land registry and the 2nd defendant Meru branch and found out that the 1st defendant had been advanced a loan facility by the 2nd defendant secured by a charge over his parcel of land.

(7) That the charge documents bears a signature by the land registered owner purported to be his yet the charge document was made without his knowledge, authority and by forging his signature.

(8) That he is still in possession of his original title deed for land parcel LR No. ABOTHUGUCHII/KIIJA/740 and he is advised by his advocate on record which advise he believes to be true that after securing a legal charge, the chargee have to retain the possession of the charged land original title deed.

(9) That he instructed the Directorate of Criminal Investigation to conduct a forensic document examination of the purported signature said to be his on the charge document, the Land Control Board Application Form purported to have signed and he submitted his specimen signatures for examination.

(10) That the directorate of criminal investigation submitted the charge document to the forensic document examination expert who found out that the signature on the charge document, Land Control Application Form and his specimen signature were made by different authors.

(11) That he issued a demand notice to the 2nd defendant informing them on the illegality of the charge document and informing them of his intentions to sue in default of discharging the charge in view of imminent threat or realization of the security.

(12) That the 2nd defendant has threatened to exercise their charge power of sale by selling his Land Parcel LR. NO. Abothuguchi/kiija/740 to recover their money to his detriment while the charge was obtained without his knowledge, authority and by fraudulent means.

(13) That he is making this application praying this Honourable Court to do preserve his land by issuing orders of inhibitions inhibiting any dealing with his land parcel LR. NO. ABOTHUGUCHI/KIIJA/740 pending the hearing and determination of this suit.

(14) That unless the orders sought are granted, he will suffer irreparable damages since the 2nd defendant will realize their security by selling his parcel of land to his detriment yet it is based on a charge acquired fraudulently.

That the defendant/respondents will not suffer any prejudice since the charge was obtained fraudulently without his knowledge and authority.

4. The Supporting documents are annexed to the applicant's affidavit.

5. I find that although the application was served no response has been filed by either of the two defendants. It is necessary to preserve the suit property while the dispute is being resolved.

6. I allow the application of 01:02:17 with no orders as to costs.

DELIVERED, DATED AND SIGNED AT MERU THIS 19th DAY OF JULY, 2017

IN THE PRESENCE OF:

C:A Janet

Kithinji for Plaintiff/Applicant

HON. L. N. MBUGUA

JUDGE