



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 208 OF 2015**

**PINNACLE CAPITAL LIMITED.....PLAINTIFF**

**VERSUS**

**LETOYA OLE KOTIKOT.....1<sup>ST</sup> DEFENDANT**

**SARAH PAULATA KORERE.....2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL (*Sued for and on behalf of the*)**

**COMMISSIONER FOR LANDS AND**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the Application dated 28<sup>th</sup> July, 2016, the Plaintiff is seeking for the following orders:

*a. That the 2<sup>nd</sup> Defendant be and is hereby restrained by an order of this court either by herself and/or her agents and/or servants from selling, transferring, taking possession, alienating, subdividing and developing the parcel of land known as Kajiado/Olekasasi/774 pending the hearing of this suit.*

*b. That a prohibitory order be issued and registered against the transfer of and/or any other dealings with the property pending the hearing and determination of this Application.*

*c. That a prohibitory order be issued and registered against the transfer of and/or any other dealings with the property pending the hearing and determination of this suit.*

*d. That the costs of this Application be provided for.*

2. The Application is premised on the grounds that the Plaintiff bought the suit land and obtained a Title Deed; that the 2<sup>nd</sup> Defendant has amassed building materials on the suit land and that the 2<sup>nd</sup> Defendant is a trespasser on the land.

3. In the Affidavit, the Plaintiff's Chairman deponed that the Plaintiff purchased the suit land from Musa Tintamei Pasha vide an Agreement of Sale dated 21<sup>st</sup> April, 2011; that by the time the Vendor died, he had not completed paying the purchase price and that the balance of the purchase price was paid to the administrators of the Estate of the deceased on 3<sup>rd</sup> December, 2014.

4. Although the Plaintiff was issued with a Title Deed for the suit land on 13<sup>th</sup> October, 2011, the Plaintiff's Chairman deponed that when the Plaintiff conducted a search on the land, it discovered that another Title Deed had been issued to the 2<sup>nd</sup> Defendant on 28<sup>th</sup> November, 2013.
5. The Plaintiff's Chairman finally deponed that the 2<sup>nd</sup> Defendant's Title Deed was issued fraudulently and that the injunctive order should issue.
6. In her response, the 2<sup>nd</sup> Defendant deponed that she is the registered proprietor of parcel of land known as Kajiado/Olekasasi/774 (*the suit land*); that she purchased the said land from the 1<sup>st</sup> Defendant and that before purchasing the land, she conducted an official search.
7. Both the Plaintiff's and the 2<sup>nd</sup> Defendant's advocates filed their submissions which I have considered. I have also considered the authorities that have been filed by both parties.
8. The evidence before me shows that the Plaintiff purchased the suit land from the late Musa Tintamei Pasha vide an Agreement of Sale dated 21<sup>st</sup> April, 2011.
9. According to the said Agreement, the completion date was 120 days from the date of signing the agreement.
10. The Plaintiff has exhibited a letter of Indemnity showing that when the Vendor died, he paid to the Administrators of the Estate the balance of the purchase price on 20<sup>th</sup> February, 2014.
11. From the Transfer document, it would appear that the suit land was transferred to the Plaintiff before the said balance of the purchase price had been paid. Indeed, the Plaintiff was issued with a Title Deed for the suit land on 13<sup>th</sup> October, 2011.
12. Although the 2<sup>nd</sup> Defendant has deponed that she purchased the suit land from the 1<sup>st</sup> Defendant, she has not annexed a Sale Agreement between herself and the 1<sup>st</sup> Defendant.
13. The 1<sup>st</sup> Defendant has also not filed any Affidavit to explain how he owned the suit land in the first place before he transferred it to the 2<sup>nd</sup> Defendant on 26<sup>th</sup> November, 2013. There is also no evidence of the payment of the alleged purchase price of Kshs. 6,300,000 by the 2<sup>nd</sup> Defendant.
14. Considering that by the time the 1<sup>st</sup> Defendant purported to sell the suit land to the 2<sup>nd</sup> Defendant the land was already registered in favour of the Plaintiff, and in the absence of a copy of the official search showing that the 1<sup>st</sup> Defendant was ever registered as the proprietor of the suit land, I am convinced that the Plaintiff has shown that he has a prima facie case with chances of success.
15. The Plaintiff, having purchased the suit land before the 2<sup>nd</sup> Defendant purported to purchase it, will suffer irreparable injury that cannot be compensated by damages unless the injunctive order is issued.
16. For those reasons, I allow the Application dated 28<sup>th</sup> July, 2016 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**