



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 252 OF 2017

NGOTHO WAMBURA.....PLAINTIFF

VERSUS

MEMPHIS CENTRE LIMITED..... 1ST DEFENDANT

DAVID MUTHUKU KIRIMI.....2ND DEFENDANT

REGISTRAR OF TITLES.....3RD DEFENDANT

AND

CHARLES KIMANI NYINGI..... 1ST INTERESTED PARTY

JANE NYAGUTHII MWANGANGI..... 2ND INTERESTED PARTY

RULING

The Plaintiff filed suit on 13/2/2017 against the Defendants claiming that the Defendants fraudulently transferred his land known L.R. No. 9363/28 (I.R. No. 71969) (“the Suit Property”). At the time of filing suit, the Plaintiff filed an application and a certificate of urgency seeking an order of prohibition to prohibit the Defendants from dealing with the Suit Property. He seeks a temporary injunction to restrain the 1st Defendant from entering, trespassing or otherwise interfering with the Plaintiff’s quiet enjoyment of the Suit Property.

The Plaintiff also seeks an order for the cancellation of the transfer of the Suit Property from the Plaintiff to the 1st Defendant. This order cannot be issued at this stage and will have to await the trial when parties will have a chance to present their evidence before the court.

The Plaintiff is the owner of the Suit Property and alleges that the 1st Defendant fraudulently or through misrepresentation obtained the transfer of the Suit Property with the aid of the 2nd Defendant who is an advocate of this court. The Plaintiff claims that he was approached by the Defendants and informed that some fraudster was trying to sell his land claiming the Plaintiff was dead. The 2nd Defendant caused the Plaintiff to execute some documents in his office. The 2nd Defendant represented to the Plaintiff that he was executing those documents as proof that he was not dead. The Plaintiff now suspects that the documents the 2nd Defendant caused him to sign were transfer documents. He claims that no consideration was paid to him for the transfer of the suit Property to the 1st Defendant. The Plaintiff claims that he had given the original title over the Suit Property to one Jimmy under a separate transaction. The said Jimmy caused the land to be subdivided and sold the Suit Property to the Interested

Parties in this case.

The Plaintiffs sought copies of the documents which were used to transfer the Suit Property to the 1st Defendant from the 3rd Defendant

The 1st Interested Party in his replying affidavit filed in court on 19/5/2017, claims to have bought portions of the Suit Land from one James Gitundu after he informed them that he had bought the Suit Property from the Plaintiff. The 1st Interested Party claims that six of them bought portions of the Suit Property from James Gitundu at a cost of Kshs. 450,000/= each. When the Interested Parties attempted to transfer the plots they had purchased from James Gitundu, they discovered that the Suit Property had been transferred to the 1st Defendant.

The 2nd Defendant in his replying affidavit filed in court on 12/4/2017, claims that the 1st Defendant's Director one Simon Mwangi, instructed him to redraw a transfer under the new land laws. The 1st Defendant informed him that he purchased the Suit Property from the Plaintiff over time between 2009 and 2012. The 2nd Defendant claims to have drawn the transfer and explained to the Plaintiff what it meant and that the Plaintiff signed it in his presence having understood that it was a transfer based on the new land laws. He claims that the Plaintiff asked the said Simon Mwangi to pay him a further sum of 6 million for the Suit Property. This money was to be paid through the 2nd Defendant's bank account then he would transmit the funds to the Plaintiff's children's bank accounts. The 2nd Defendant avers that the 1st Defendant failed to forward the sum of Kshs. 6 million as they had agreed.

The 1st Defendant did not file any response to the application.

The issue this court has to determine is whether it ought to issue a prohibition order and a temporary injunction to restrain the 1st Defendant from dealing with the Suit Property. The Plaintiff claims not to have sold the Suit Property to the 1st Defendant while the Interested Parties claim to have bought the Suit Property from a 3rd Party who claims to have bought it from the Plaintiff. The Plaintiff admits giving the title over the Suit Property to this third Party as security for a loan. It is not clear whether the loan was ever paid.

In light of all these claims by several persons over the Suit Property, the court is of the view that it is fit and proper to make an order inhibiting the registration of any dealings with the Suit Property to obviate a situation where the Suit Property may be alienated to third parties thereby compounding the issues further before this suit is heard and determined. The court issues an inhibition a copy of which shall be sent to the Land Registrar for registration in the appropriate register inhibiting dealings with the Suit Property. Costs shall be in the cause.

Dated and delivered at Nairobi this 20th day of September 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Njiraini for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant