

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAKAMEGA
ELC NO. 318 OF 2014

FRANCIS EMMANUEL BARASA.....PLAINTIFF/APPLICANT

VERSUS

JUMA BOYI.....1ST DEFENDANT/RESPONDENT

SHEBAN BOYI JUMA.....2ND INTENDED DEFENDANT/RESPONDENT

RULING

This application is dated 5th April 2017 and is brought under section 1a, 1b, 3, 3a, 63e and 100 of the Civil Procedure Act, Order 1 Rule 3 and 2 order 8 rules 3 of the Civil Procedure Rules for orders that:-

1. That Sheban Boyi Juma respondent herein be enjoined in this suit as the 2nd defendant.
2. The applicant be granted leave to amend the main originating summons.
3. The amended originating summons annexed or filed together with this application be deemed as duly and properly filed upon payment of the requisite court fees on amendment.
4. That costs of this application be provided for.

The application is based on the grounds that the subject matter of this suit is land reference number South Wanga/Ekero/632 which the 1st respondent/defendant has fraudulently transferred to the 2nd Intended defendant /respondent during the pendency of this suit to defeat the plaintiff's interest. That the respondents in collusion want to waste the suit land to 3rd parties and unless the 2nd respondent is enjoined on the suit land and in the event judgment is in the applicant's favour the purpose of this suit may be rendered nugatory since he now enjoys proprietorship. That the applicant has interest in the suit land as a bonafide purchaser for value of an area measuring 2 acres.

The applicant submitted that, he filed this suit on 19th June 2012 for recovery of 2 acres of land from the 1st defendant/respondent in title number South Wanga/Ekero/632 (Annexed and marked FEB 1 is a copy of the official search dated the 23rd March 2012). As evidenced on the said search and at the time the applicant was filing this suit the parcel of land herein registered in the names of the 1st defendant/respondent. The said partition of 2 acres was purchased from the 1st defendant/respondent in 1976. That the 1st defendant/respondent and 2nd Intended defendant/respondent herein caused fraudulently to be changed the registration of the parcel of land herein from the 1st defendant/respondent to 2nd Intended defendant/respondent on the 8th December, 2014 when the suit herein was still pending (Annexed and marked FEM 2 is a copy of the title deed dated the 8th December 2014 for Sheban Boyi Juma the 2nd Intended defendant/respondent herein). The defendants/respondents did so with an aim of defeating his interest in the suit land when his said interest is determined at the conclusion of his case. The defendants did so upon causing the caution that had been lodged at the lands registry being secretly removed without any notice being served upon him to enable him challenge the said removal in view of the pendency of this suit in court hence the application herein. It is now paramount that the 2nd Intended

defendant/respondent herein be enjoined on this suit to enable the court also hear his evidence in respect of the suit land.

The 1st defendant/respondent opposed the application and submitted that, the removal of caution was not his business neither was it that of 2nd Intended defendant/respondent but the Land Registrar and by extension the government yet neither is sought to be party. The alleged 'fraud' has not been tabulated yet again it is on the two offices left out. The respondent has learnt of the notices for removal of caution annex "JB1a, b" and neither the 1st defendant/respondent or 2nd Intended/defendant/respondent is responsible. The application is prejudicial to him as it will occasion delays with incessant costs.

This court has carefully considered the applicant's and the respondent's submission. It is stated by the applicant that the subject matter of this suit is land reference number South Wanga/Ekero/632 which the 1st respondent/defendant has fraudulently transferred to the 2nd Intended defendant/respondent during the pendency of this suit to defeat the plaintiff's interest. That the respondents in collusion want to waste the suit land to 3rd parties and unless the 2nd Intended defendant/respondent is enjoined on the suit land and in the event judgment is in the applicant's favour the purpose of this suit may be rendered nugatory since he now enjoys proprietorship. It is his contention that ownership has moved to the 2nd Intended defendant/respondent. I find that this application has merit and I grant it as prayed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 12TH DAY OF OCTOBER 2017.

N.A. MATHEKA

JUDGE