



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 125 OF 2017**

**JOSEPH MUNGAI GICHURU.....PLAINTIFF**

**VERSUS**

**JAMES NJUGUNA MAINA.....1<sup>ST</sup> DEFENDANT**

**CHANDRAKANT LALJI SHAH.....2<sup>ND</sup> DEFENDANT**

**BHUDHI LALJI PETHRAJ SHAH.....3<sup>RD</sup> DEFENDANT**

**NAKURU, LAND REGISTRAR.....4<sup>TH</sup> DEFENDANT**

**RULING**

***(Application for injunction; applicant having been registered owner of suit land; claim that the same transferred by the 1st respondent to the 2nd and 3rd respondents by way of fraud; applicant seeking cancellation of title of the 2nd and 3rd respondents; application not opposed; prima facie case established; application allowed with costs)***

1. This suit was commenced on 21 March 2017 by way of a plaint. Together with the plaint, the plaintiff filed an application for injunction, seeking to restrain the defendants from any dealings or interference with the land parcel Nakuru/Lenginet/75, which is the subject matter of this case, pending the hearing and determination of the suit. It is that application which is the subject of this ruling. Despite being served, the defendants did not respond to the said application, and save for the 4th defendant, the 1st to 3rd defendants have not filed an appearance to this suit. The only material that I have is therefore that supplied by the plaintiff.

2. It is the plaintiff's case that he has all along been the registered owner of the land parcel Nakuru/Lenginet/75 (hereinafter referred to as "the suit land"). In the month of March of the year 2016, he indicated intention to sell this land but he did not get good offers and he abandoned the idea. He had during that period given a copy of his title deed to his neighbour for any interested buyer to conduct due diligence. In the month of September 2016, he received information from his caretaker that some strangers had visited the land and when he spoke to them, they informed him that they had purchased the land. It emerged that these purchasers were the 2nd and 3rd defendants and they claimed to have purchased the suit property from the 1st defendant. It is the plaintiff's position that the 1st defendant fraudulently caused the suit land to be transferred to the 2nd and 3rd defendants who are now the registered proprietors of the suit land. Inter alia, it is pleaded that the 1st defendant posed himself as the legal owner when he very well knew that he had no capacity to sell the land. In his suit, the plaintiff

wishes to have the title of the 2nd and 3rd defendants cancelled and he be reinstated as the proprietor. He has also sought an order of permanent injunction against the defendants.

3. From the material before me, I have seen that indeed the plaintiff was at some point the registered proprietor of the suit land having obtained his title deed on 13 January 2012. He refutes having sold his land to any of the 1st to 3rd respondents. None of the respondents have come to court to controvert what the plaintiff has averred. I am therefore of the view that the plaintiff has displayed a prima facie case with a probability of success that the suit property was fraudulently transferred to the 2nd and 3rd defendants. If I do not allow the application for injunction, the 1st, 2nd and 3rd defendants may move to take possession of the land or deal with it to the prejudice of the plaintiff.

4. For the above reasons, I allow the application for injunction. I order the 1st to 3rd defendants not to take possession of the suit property and not to enter into any dealings over the same until this case is heard and determined. I also issue an order of inhibition, inhibiting the registration of any disposition in the register of the suit land until this case is finalized or until further orders of this court.

5. The plaintiff shall also have the costs of this application.

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 12th day of October 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**

Ms. B. Wangari holding brief for Ms. Muthoni Gathecha for the plaintiff/applicant.

No appearance on part of the defendants/respondents.

Court Assistant: Carlton Toroitich

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**