



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

**AT MERU**

**ELC CASE NO. 225 OF 2017**

**JAMES KARIUKI.....PLAINTIFF**

**VERSUS**

**GREAT ACHIEVER INVESTMENT GROUP LTD.....DEFENDANT**

**RULING**

1. The Notice of Motion dated 24<sup>th</sup> July 2017 seeks the following orders:-

a) Spent.

b) THAT this Honourable Court be pleased to order that an inhibition be issued and the same be registered against L.R No. NTIMA/IGOKI/6035 to restrict any dealings or transfer of the said parcel of land and the District Land Registrar, Meru Central District be directed to register the said inhibition against the said parcel of land pending the hearing and determination of this application inter parties or until further Court orders and / or this suit.

c) THAT the Honourable Court be pleased to issue an order of an interlocutory prohibitory injunction restraining the defendant by itself, its servants and/or agents or anybody else acting on its behest, direction, control or authority from evicting the plaintiff, demolishing his houses, alienating, selling, transferring and / or in any other way whatsoever interfering with the plaintiff's quiet, peaceful, uninterrupted, actual and exclusive occupation and enjoyment in respect of the suit land L.R. NO. NTIMA / IGOKI / 6035 pending the hearing and determination of this application inter parties or until further Court orders and / or this suit.

d) THAT the costs of this application be provided for.

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

a) THAT the plaintiff/applicant has been and is in possession of the suit land L.R. NO. NTIMA / IGOKI / 6035 and has fully and extensively developed the same.

b) THAT the defendat has fraudulently transferred the plaintiff's parcel of land L.R. NO. NTIMA / IGOKI / 6035 in its name and is now secretly and stealthily seeking to sell same to a 3<sup>rd</sup> buyer.

c) THAT the defendant is intent on forcibly evicting the plaintiff from the suit land and this Court's intervention is necessary to stop impunity and hooliganism.

d) THAT the Honourable Court do preserve the suit land and the status quo prevailing thereon by granting the prayers sought by the plaintiff.

3. The application is supported by the Affidavit of JAMES KARIUKI sworn on 24<sup>th</sup> July 2017, where he states: -

i. THAT sometimes in February 2012, Applicant approached the defendant with an offer to sell his parcel of land L.R. NO. NTIMA / IGOKI / 6035 to meet some urgent and unforeseen financial obligations.

ii. THAT on 9<sup>th</sup> February 2016 the defendant and Applicant entered into an agreement for sale of his land L.R. NO. NTIMA / IGOKI / 6035 measuring about 0.0581 HA at a consideration of Kshs. 200,000/= (Annexed herein and marked as exhibit JK-01 is a true copy of the agreement).

iii. THAT the defendant paid Applicant a sum of Kshs. 120,000/= on the said date of signing of the agreement and the balance of Kshs. 80,000/= was payable on or before the transfer of ownership pursuant to clause 2 of the agreement.

iv. THAT on the date of the agreement, the defendant further asked applicant to sign for them a transfer form as a sign of his commitment and to give them confidence and faith that he was ready and willing to transfer the said parcel of land to them once they paid him the balance.

v. THAT after a month of signing the said agreement Applicant approached the defendant's official one DAVID MUTHUNGU for payment of the balance of Kshs. 80,000/= as he had met his side of the bargain by signing the transfer form in the defendant's favour.

vi. THAT the said defendant's official DAVID MUTHUNGU informed Applicant that they were making arrangements to pay him the said balance and once they were ready with the balance of the purchase price of Kshs. 80,000/= they would notify him to collect the payment.

vii. THAT on a subsequent meeting to follow up the payment of the balance with the said defendant's official, DAVID MUTHUNGU he informed applicant that he should stop following up the payment and that they would call him when the same was ready.

viii. THAT after waiting in vain for the said payment, Applicant instructed his advocates to write to the defendant a demand letter. (Annexed herein and marked as exhibit JK-02 is a copy of the advocates' letter dated 10<sup>th</sup> December 2016).

ix. THAT recently some strange people started coming to view his land and when he inquired from them on the purpose of their visit they informed him that they were buyers sent by the defendant to view the same.

x. THAT Applicant immediately visited the Land Registry to conduct a search on his said land and he was shell shocked to discover that the defendant had fraudulently transferred Applicant's land into its name and obtained a title deed on 9<sup>th</sup> June 2017. (Annexed herein and marked as exhibit JK-03 is a copy of the search certificate).

xi. THAT Applicant never attended any Land Control Board meeting for consent to transfer the suit land to the defendant.

xii. THAT Applicant has built a 3bed roomed house, 2 roomed semi-permanent house, fenced, installed electricity, piped water, planted food crops on the said portion of the suit land and settled there with his family since year 2006. (Annexed herein and marked as exhibit JK-04 are photographs of the developments).

xiii. THAT Applicant and his family attach profound sentimental and economic value into the suit land and unless the Court intervenes his family and Applicant will be thrown out of the suit land and they shall be rendered destitute, landless or homeless as they have no other place to call home.

4. The application was served but no response was filed.

5. I find that the plaintiff has availed documents capturing the historical registration background of the suit land. He was once the registered owner of the land and perhaps he is the one in occupation of the suit land. There being no evidence to rebut the plaintiff's averments, then I am inclined to allow the application.

6. The application of 25.7.17 is allowed with no orders as to costs.

**DELIVERED, DATED AND SIGNED AT MERU THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2017 IN THE PRESENCE OF:-**

CA Janet/Haway

Muthomi for Plaintiff/Applicant present

**Hon. L.N.MBUGUA**

**ELC JUDGE**