**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LANDS COURT AT NAROK**

**ELC SUIT NO. 154 OF 2017**

**NAZIRALI MUSA HAJI.....PLAINTIFF**

**-VERSUS-**

**COUNTY GOVERNMENT OF NAROK.....1ST DEFENDANT**

**HARUN LEMPAKA(*suing as the legal representative of Anna Koin Lempaka)*...2ND DEFENDANT**

**RULING**

The Application before me is the one dated 9th November, 2016 wherein one **HARUN LEMPAKA** suing as the Legal Representative of **ANNA KOIN LEMPAKA** prays to be enjoined as the 2nd Defendant. The Applicant also seeks to set aside and/or vacate the orders issued herein that were issued on 20th September, 2016 in the alternative, the suspension of the said orders and lastly an order of injunction restraining the Plaintiff from constructing, entering or remaining on the suit plot that is, **NAROK TOWNSHIP BLOCK 4/84** which is also known as block 4/251.

The said Application was supported by among other grounds that the Applicant is the true, lawful and genuine owner of the suit plot and that the Plaintiff has fraudulently transferred the plot and that the intended 2nd Defendant has an interest in the said land and further the Applicant obtained orders by way of Non-disclosure of material facts.

The Application was supported by the Affidavit of **HARUN LEMPAKA** who states that he is the administrator of the Estate of **ANNA KOIN LEMPAKA** and has a grant of letters of administration that were issued vide Nairobi High Court Succession Cause No. 2066 of 1999. He states in his affidavit that his late wife purchased the land in 1985 from one **CHARLES ONGAU MOGESI** and that the suit plot was transferred in her name and she attached a Sale Agreement as evidence of the sale.

The Applicant further states that he has been paying rates to the 1st Defendant since 2003 and that the Respondent removed building materials on the plot and deposited his own having fraudulently transferred the property.

The Application was opposed by the Respondent.

When the parties appeared before me they agreed to have the Application disposed off by way of written submissions and each of the parties have filed submissions.

I have read the Application before me and the submissions made by counsel and there are three issues for

me to determine at this stage which are:-

**1. Whether the Applicant be enjoined as the 2nd Defendant.**

**2. Whether I should vacate the orders made on 20th September, 2016.**

**3. Whether I should issue an order of injunction against the plaintiff as prayed by the Applicant.**

In determining the 1st issue, the test to be applied is whether the determination of the issue in the dispute will affect the party applying to be enjoined into the suit in the instant case the Applicant has demonstrated that he has an identifiable interest in the suit plot as he is the administrator of the estate of his late wife who purchased the same from a third party and as such any order or judgement that will be made in this suit will generally affect him and the estate of the deceased.

On the 2nd prayer as to whether the court should vacate the orders of injunction the test to be applied is whether the party who obtained the said order is guilty of material non-disclosure or the said order was made through fraud.

In the Application before me the Respondent herein obtained orders on 20th September, 2016. I find that in the instant case the Applicant while not stating the history to the disputes even failed to disclose the existence of a suit at the Narok Magistrate's Court. In my view this was a deliberate attempt to hoodwink the court in granting the orders. This being a court of equity he who comes, to equity must come with clean hands and since there was non-material disclosure by the Respondent, I do exercise my discretion and vacate the orders that were issued.

On the third prayer of injunction the Applicant has demonstrated that he has a prima facie case with probability of success and I therefore allow the said prayers.

I do realize that there are other prayers that are consequential to the above orders that I made.

The upshot of the above is that I allow the Applicants Application dated 9th November, 2016 and this are my orders:-

**1. That Harun Lempaka be joined as the 2nd Defendant.**

**2. That the orders granted by the court on 20th September, 2016 are hereby set aside.**

**3. That an order of injunction do issue restraining the plaintiff from constructing, removing and/or dealing with the suit land pending the hearing and determination of the suit herein.**

**4. That the Applicant's Defence and counter claim duly filed with the Application herein are deemed to be filed and the same be served on the Respondents. The Respondents are granted leave to reply to the same.**

**5. That costs be in the cause.**

Orders accordingly.

**DATED, SIGNED** and **DELIVERED** in open court at **NAROK** on this **10th day of November, 2017.**

**Mohamed N. Kullow**

**Judge**

**10/11/17**

In the presence of:

N/A for the parties

CA:Chuma

**Mohamed N. Kullow**

**Judge**

**10/11/17**