



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 986 OF 2015

BENSON ONGOTO OGOT.....1ST PLAINTIFF

JOSEPHINE ACHIENG AKOTH.....2ND PLAINTIFF

=VERSUS=

KANYUKU WANJAU.....DEFENDANT

RULING

1. The applicants filed an application dated 8th October 2015, in which they seek an injunction restraining the respondent from in anyway dealing with plot No. C66 (Mahatima Project) Kariobangi comprised in LR No. 209-10046 (suit property). The applicants contend that they purchased the suit property from its previous owner Joshua Mungai Mweha on 26th November 2012. The applicants thereafter made payments to the Nairobi City Council and were accordingly registered as owners of the suit property in the council records pending issuance of title documents.

2. In August 2015 and September 2015, the respondent trespassed into the suit property on the grounds that he was the owner of the same. The respondent has since persisted in claiming that he is the owner of the suit property prompting the applicants to file the present application seeking injunctive reliefs.

3. The Respondent has opposed the applicant's application through a replying affidavit sworn on 17th May 2016 and further affidavits sworn on 20th April 2017 and 26th Aril 2017 respectively. The respondent contends that he was the original allottee of the suit property. That the suit property was allotted to him on 7th October 2004 and a certificate of ownership given to him. That according to him the vendor who claims to have sold the suit property to the applicants owns a different property opposite the suit property.

4. I have gone through the applicants' application as well as the opposition to the same by the respondent. Both the applicants and the respondent are claiming to own the suit property. The applicants base their claim on purchase from its previous owner in 2012. The respondent on the other hand is claiming the same on the basis that he is the original allottee of the same since 2004. Both claimants have annexed what they call extracts of register of members kept by Mahatima Project (Kariobangi South River Bank) who were allocating the plots in the area. The list presented by the applicant shows that the allottee of the suit property was Joshua Mweha. The list presented by the respondent shows that he is the allottee of the suit property.

5. It is clear that one of the lists is not genuine and it is not for the court to say at this stage which of the

two is not genuine. This is a matter which can be decided upon after evidence is given in a trial. The position in such cases where there are serious conflicts of facts, the proper action to be taken by the court is to order that the status quo be maintained until the matter is resolved in a trial. See Court of Appeal decision in **Ougo & another Vs Otieno (1987) KLR 364 at 365** where it was held that the general principle is that where there are serious conflicts of facts, the trial Court should maintain status quo until the dispute has been decided in trial.

6. From the further affidavits filed by the respondent in April 2017, the respondent has just only put a foundation for a residential house. An order of maintenance of status quo is hereby given directing that there shall be no further construction on the suit property until the dispute herein is determined. Further there should be no transfer of the suit property by either party until the dispute is resolved in a trial. Costs of this application shall be costs in the cause.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **6th** day of **November 2017**.

E. O. OBAGA

JUDGE

In the presence of;-

Mr Makori for applicant

Court Assistant: Hilda

E. O. OBAGA

JUDGE