



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. SUIT NO. 339 OF 2017**

**ANDERSON KOGI WAWERU.....PLAINTIFF**

**VERSUS**

**LULU NYAWIRA OGUDA.....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR KIAMBU sued through**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**RULING**

Through the application dated 18/5/2017, the Plaintiff seeks an order directing the Land Registrar, Kiambu to register a restriction against L. R. No. Dagorretti/Mutuini/1122 (“the Suit Property”) pending hearing and determination of this suit. He also seeks an order of injunction to restrain the 1<sup>st</sup> Defendant from leasing, charging, selling, subdividing, dealing with, encroaching or trespassing on the Suit Property pending hearing and determination of the application.

The court granted an *ex parte* order of injunction when the matter first came up under certificate of urgency. The application is supported by the Plaintiff’s Affidavit. The Plaintiff entered into an agreement with the 1<sup>st</sup> Defendant for the sale of the Suit Property. Both parties were represented by Peter Njenga Mwangi advocate. The completion date was 90 days from the date of the agreement. The Plaintiff claims that the 1<sup>st</sup> Defendant’s advocate went with the sale agreement and promised to give him a copy once the Defendant had signed it. The sale agreement has never been given to the Plaintiff. The Plaintiff alleges that the 1<sup>st</sup> Defendant unduly influenced and misrepresented that the Plaintiff’s aged father obtained Land Control Board consent for the transfer of Suit Property to the 1<sup>st</sup> Defendant while the Plaintiff was bedridden. The Plaintiff claims the 1<sup>st</sup> Defendant deceived him to release the title deed to her on her promise that she would complete paying the balance of the purchase price as soon as the Plaintiff signed the transfer forms and handed over the title deed. The Plaintiff registered a caution against the Suit Property to protect his interest in the land on 19/8/2016. He carried out a search on 6/3/2017 and discovered that the 1<sup>st</sup> Defendant had fraudulently transferred the Suit Property to her name despite there being a caution placed on the land by the Plaintiff. The Plaintiff claims he withheld his PIN certificate, passport photographs and a copy of his identity card which are mandatory when registering a transfer of land. The Plaintiff claims that to date the 1<sup>st</sup> Defendant has not completed paying the balance of the purchase price. He seeks to have the sale agreement rescinded and the 1<sup>st</sup> Defendant ordered to accept the sums she paid less 10% deposit which she is to forfeit.

The Plaintiff attached a copies of the title deed issued in his name; the search dated 9/6/2016 together with a copy of the help form giving a summary of the complaint he made against Mr. Peter Njenga Mwangi who represented the 1<sup>st</sup> Defendant in the sale transaction. He also annexed a copy of his advocate’s letter dated 27/10/2016 addressed to the Advocates Complaints Commission.

The 2<sup>nd</sup> Defendant, who handled the transaction, states that he gave each party a copy of sale agreement. He claims that the Plaintiff pleaded with the 1<sup>st</sup> Defendant to release substantial sums of money to enable the Plaintiff seek further medical treatment which he claims the 1<sup>st</sup> Defendant gave.

The 1<sup>st</sup> Defendant opposed the application through her replying affidavit sworn on 17/6/2017. She admits paying 10% of the purchase price when the sale agreement was executed. She alleges that the Plaintiff gave her a copy of his pin certificate on 28<sup>th</sup> November. She admits that her advocate proceeded to register the title in her name and she was issued with a title deed. She claims to have deposited the entire purchase price with the advocate and that she does not owe any balance on the purchase price.

The court has considered the application, the replying affidavit and the submissions of counsel. A title deed was issued to the 1<sup>st</sup> Defendant on 29/12/2016. From the statements of account produced by the 1<sup>st</sup> Defendant, only two payments of Kshs. 500,000/= and 150,330/= were made by cheque on 31/3/2016 and 13/4/2016 respectively. The purchase price under the agreement was Kshs. 4.8 million. There is no evidence that the 1<sup>st</sup> Defendant paid the balance of the purchase price. The court will have to make a determination at the trial on whether the transfer to the 1<sup>st</sup> Defendant was illegal. The 1<sup>st</sup> Defendant attached copies of the emails she exchanged with Njenga Mwangi Advocates. The emails do not confirm that the 1<sup>st</sup> Defendant paid the full purchase price. They only mention the release of Kshs. 600,000/= to the Plaintiff.

The court finds that the Plaintiff has a *prima facie* case against the 1<sup>st</sup> Defendant. It is reasonable to issue an injunction to restrain the 1<sup>st</sup> Defendant who is registered as the proprietor of the Suit Property from dealing with the Suit Property until the case is heard and determined. The Plaintiff will have the costs of the application to be borne by the 1<sup>st</sup> Defendant.

**Dated and delivered at Nairobi this 14<sup>th</sup> day of December 2017.**

**K. BOR**

**JUDGE**

In the absence of counsel for the Plaintiff and Defendants

Mr. V. Owuor- Court Assistant