



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 30 OF 2017**

**PATRICK SHIMOKA OKOTH :::::::::::::::PLAINTIFF/APPLICANT**

**VERSUS**

**JUD DORICE AKINYI ONYURAH :::::::::::::::DEFENDANT/REPODENT**

**RULING**

This application is dated 20<sup>th</sup> July 2017 and is brought under section 63 (e) section 3 (a) of the Civil Procedure Rules seeking the following orders;

1. That this honourable court be pleased to order maintenance of status quo as at the time of filling this suit in respect of the land parcel NO. BUTSOTSO/SHIKOTI/17207.
2. That costs of this application be provided for.

The applicant submitted that, vide a sale agreement dated 22<sup>nd</sup> September 2014 and signed in the presence of their advocate M/s. Muleshe & Company Advocates. He sold the land parcel known as BUTSOTSO/SHIKOTI/17207 to the respondent herein. He sold this land parcel measuring approximately 0.05 HA or thereabout at a consideration price of Ksh. 670,000/=. The respondent paid part of the price amounting to Ksh. 670,000/= which he did acknowledge receipt thereof annexed and marked PSO-1 is a copy of the agreement. That the respondent failed refused and/or neglected to pay the balance of the purchase price agreed. That to his surprise, the respondent went ahead to process transfer of the suit land BUTSOTSO/SHIKOTI No. 17207 without his consent. That to the best of his knowledge he did not attend the land control board for the transfer purpose which he learned later on that the respondent had obtained the consent to proceed on. That following the respondent acts of fraud, he proceeded to the High Court to file a land case suit herein against the respondent. The applicant is apprehensive that since the respondent has the title deed, his rights will be extinguished in law yet the land parcel is rightfully his. That if the respondent evicts him from the said land parcel, he stands to suffer irreparable loss and the suit herein will lose meaning as the subject matter shall have come to a waste. That the respondent will not be prejudiced in any way should the orders sought be granted.

This court has considered the application, annexures and submissions therein. The respondent was served and failed to attend court and the application was not opposed. The application is premised on the following grounds; that the applicant has extensively developed the suit land and is currently in occupation of the same. That the respondent has fraudulently transferred the suit land in her names and is threatening to evict the applicant. That it is necessary that the subject matter of the suit be preserved. That the respondent will not be prejudiced in any way should the orders sought be granted.

It is the applicant's submissions that he sold the land parcel known as BUTSOTSO/SHIKOTI/17207 to

the respondent herein. He sold this land parcel measuring approximately 0.05 HA or thereabout at a consideration price of Ksh. 670,000/=. The respondent paid part of the price amounting to Ksh. 670,000/= which he did acknowledge receipt thereof annexed and marked PSO-1 is a copy of the agreement. That the respondent failed refused and/or neglected to pay the balance of the purchase price agreed. That to his surprise, the respondent went ahead to process transfer of the suit land BUTSOTSO/SHIKOTI No. 17207 without his consent. Being that the title deed of the suit land BUTSOTSO/SHIKOTI No. 17207 is now in the respondent's name one needs to look at the Land Registration Act which is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

Section 26 (1) of the Land Registration Act states as follows:

“The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –

- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

This court in considering this matter referred to the case of **Elijah Makeri Nyangw'ra –vs- Stephen Mungai Njuguna & Another (2013) eKLR** where the court held that the title in the hands of an innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. **Hon Justice Munyao Sila** in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows:

***“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme”.***

Be that as it may and from the annexure marked PSO-1 which is a copy of the agreement, it appears the respondent paid Ksh 350,000/= leaving a balance of Kshs 320,000/= which according to the applicant remains unpaid to date. The respondent has not produced any evidence to the contrary. The applicant further alleged fraud that the respondent went ahead to process transfer of the suit land BUTSOTSO/SHIKOTI No. 17207 without his consent. I find that the respondent has established a prima facie case with chances of success. I find the application has merit and I grant the following orders;

1. That an order maintenance of status quo as at the time of filling this suit in respect of the land parcel NO. BUTSOTSO/SHIKOTI/17207 to issue pending the hearing and determination of this suit.
2. That costs of this application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 13<sup>TH</sup> DAY OF DECEMBER 2017.**

**N.A. MATHEKA**

**JUDGE**