



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 818 OF 2015**

**ROBERT KINUTHIA KANGETHE.....1<sup>ST</sup> PLAINTIFF**

**LOVELOCK KARIUKI KANGETHE.....2<sup>ND</sup> PLAINTIFF**

**JANE WANGARE KANGETHE.....3<sup>RD</sup> PLAINTIFF**

**KIMANI NJOROGE KANGETHE.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**BURUBURU FARMERS COMPANY LTD.....1<sup>ST</sup> DEFENDANT**

**WAWERU NGINYA.....2<sup>ND</sup> DEFENDANT**

**WASHINGTON GATHANU THUTHI.....3<sup>RD</sup> DEFENDANT**

**PHOEBE NYAMBURA KAMARA.....4<sup>TH</sup> DEFENDANT**

**RULING**

This ruling is in respect of two applications. The Plaintiff filed the application dated 17/12/2015 seeking an injunction to restrain the Defendants from dealing with L.R. No. Nairobi/ Block 102/620 and Nairobi/Block 102/517 until the suit is heard and determined on the grounds that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants fraudulently transferred Nairobi/ Block 102/620 (“the Suit Property”) to the 4<sup>th</sup> Defendant after issuing a transfer over the same plot to the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs. The Plaintiffs are apprehensive that the Defendants may commence construction on the Suit Property. The application is supported by the 1<sup>st</sup> Plaintiff’s affidavit in which he depones that his father was an original shareholder of Buruburu Farmers Company Limited. The 1<sup>st</sup> Plaintiff’s father bought shares in the 1<sup>st</sup> Defendant. His father continued making payment to the 1<sup>st</sup> Defendant after his grandfather’s demise in 1976.

The Plaintiffs aver that the 1<sup>st</sup> Defendant’s officials asked them to pay Kshs. 10,000/= to facilitate the transfer and present their mother’s identity card after which the plot number Nairobi/ Block 102/620 was pointed out to them as the plot they were to be given. The Plaintiffs later learnt that the 1<sup>st</sup> Defendant’s officials had transferred this plot to the 4<sup>th</sup> Defendant. The 1<sup>st</sup> Defendant only transferred a smaller portion being Nairobi/ Block 102/517 to the 3<sup>rd</sup> and 4<sup>th</sup> Plaintiffs. The Plaintiffs lodged a complaint with the police and the 1<sup>st</sup> Defendant’s officials were charged with the offence of conspiracy to defraud contrary to Section 317 of the Penal Code. The court found them guilty of fraudulently transferring L.R. Number Nairobi/ Block 102/620 to another person knowing very well that the Plaintiffs were legally

entitled to it. The Plaintiffs filed this suit seeking a declaration that the 4<sup>th</sup> Defendant's title ought to be cancelled when they learnt that the Defendants had started construction on the disputed plot.

The 4<sup>th</sup> Defendant filed the application dated 2/1/2016 seeking to strike out this suit on the grounds that it is an abuse of the court process and that the Plaintiffs have no locus to bring this suit. The application is supported by the 4<sup>th</sup> Defendant's affidavit in which she depones that she had previously filed **ELC No. 1031 of 2012** against one of the Plaintiffs' sisters over this same parcel of land and obtained an injunction on 20/12/2012 to restrain her from trespassing on her property. The 4<sup>th</sup> Defendant urged the court to hear her case first since it was filed prior to the instant suit. The 4<sup>th</sup> Defendant avers that she bought L.R. Number Nairobi/ Block 102/620 from the 1<sup>st</sup> Defendant for Kshs. 900,000/= in 2010. The 4<sup>th</sup> Defendant relied on the same grounds in opposing the Plaintiff's application for injunction. She urges the court to dismiss the Plaintiffs' application for injunction with costs since she is the bona fide purchaser for value of the Suit Property.

The court has considered the two applications together with the submissions of counsel. The Plaintiffs maintain that their sister who was sued by the 4<sup>th</sup> Defendant in ELC 1031 of 2012 does not claim ownership of the Suit Property.

The court is of the view that it is necessary to preserve the Suit Property and directs the parties to maintain the status quo prevailing on the ground at the moment until this suit is heard and determined. None of the parties is to transfer, sell, charge or otherwise deal with the Suit Property until this suit is determined.

**ELC 1031 of 2012** is to be brought up for mention on the same date with this case so that directions can be given on how the hearing of the two matters will proceed since they relate to the same Suit Property.

The costs for the two applications will be in the cause.

**Dated at Nairobi this 4th day of December 2017.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Gachimu for the Plaintiffs

Mr. Mungai for the Defendants

Mr. V. Owuor- Court Assistant