



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.121 OF 2015

ROPHUS MWANGALA NYAMAWI.....PLAINTIFF/APPLICANT

=VERSUS=

SHILA MUMBUA MAKUMBI.....DEFENDANT/RESPONDENT

AND

MICHAEL OKACH OMONDI.....INTERESTED PARTY

RULING

1. In the Application dated 22nd July, 2015, the Plaintiff is seeking for the following orders:-

(a) The Respondents, their servants, agents and/or assigns be restrained by way of temporary injunction from interfering, selling, transferring and/or dealing in any manner with plot No. Kilifi/Mtwapa/1406 pending the hearing and final determination of this suit.

(b) The costs of this Application be provided for.

2. The Application is premised on the ground that the Applicant is the owner of one acre of parcel of land number Kilifi/Mtwapa/1406 which forms part of parcel of land number Kilifi/Mtwapa/175; that the Respondent has failed or refused to pay the Applicant the sum agreed upon and that the Respondent has caused the said plot to be subdivided with a view of disposing it off.
3. According to the Plaintiff's deposition, he bought the suit property from Juma Athman Gambo. However, the seller proceeded to sell the entire parcel of land and agreed to refund him the Kshs.600,000 that he had paid him; that the Defendant only paid him Kshs.200,000 but has refused to pay the balance.
4. The Interested Party was enjoined in this suit and filed a Replying Affidavit. The Interested Party deponed that he granted to the Defendant a loan whereupon she surrendered to him the title deed of Kilifi/Mtwapa/4106 as security.
5. According to the Interested Party, the Defendant later on agreed to sell to her the suit property measuring one acre and that the suit property was transferred to his name.
6. The Plaintiff has reiterated in his Plaint that the Defendant agreed to refund him Kshs.600,000 being the amount he paid to Jumaa Athman Gumbo who had sold to him one (1) acre of parcel of land number Kilifi/Mtwapa/175. The said plot was subsequently subdivided to create parcel of

- land number Kilifi/Mtwapa/1406 (the suit property) and Kilifi Mtwapa/1405.
7. The Plaintiff has further acknowledged that he received Kshs.200,000 leaving a balance of 400,000.
 8. In the Plaint,the Plaintiff has prayed for a refund of Kshs.400,000 plus interest and in alternative, the register of Kilifi/Mtwapa 4106 to be rectified to reflect his name.
 9. The record shows that the Defendant has since sold the suit property to the Interested party.
 - 10.In view of the admission by the Plaintiff in his pleadings that he is entitled to a refund of Kshs.400,000 plus interest from the Defendant, it follows that the Plaintiff will not suffer any irreparable injury that cannot be compensated by damages if the injunctive order is not granted.
 - 11.The alternative prayer for a refund of Kshs.400,000 plus interest in the Plaint dis-entitles the Plaintiff from being granted an injunctive order.
 - 12.In any event, the record shows that the Defendant has since sold the suit property to the Interested Party.
 - 13.The suit property is therefore out of reach of the Defendant who had promised to refund the Plaintiff the money paid to him.
 - 14.Having not challenged the process that the Interested Party purchased the suit property, I find and hold that the Plaintiff has not established a prima facie cause as against the registered proprietor of the suit property.
 - 15.For those reasons, I dismiss the Application dated 22nd July 2015 with costs.

Dated and delivered in Malindi this 26th day of February, 2016.

O. A. Angote

Judge