



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
**ELC. NO. 188 OF 2015**

**JULIUS MAILU KOMU.....PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**

**THE COUNTY LAND REGISTRAR, MACHAKOS.....2<sup>ND</sup> DEFENDANT**

**RAHAB MUTHONI NDERITU.....3<sup>RD</sup> DEFENDANT**

**RULING**

Coming up before me for determination is the Notice of Motion dated 28<sup>th</sup> July 2015 in which the Plaintiff/Applicant seeks for the following orders:

1. Spent.
2. That an inhibiting order do issue inhibiting the 2<sup>nd</sup> Defendant, his/her agents, servants and/or employees or anybody working under him/her from registering any dealings over all that parcel of land known as Machakos/Kiandani/3011 (hereinafter referred to as the “suit property”) pending the hearing and determination of this Application and/or until further orders of this honorable court.
3. That an inhibiting order do issue inhibiting the 2<sup>nd</sup> Defendant, his/her agents, servants and/or employees or anybody working under him/her from registering any dealings over the suit property pending the hearing and determination of this suit and/or until further orders of this honorable court.
4. The 3<sup>rd</sup> Defendant, her agents, servants and/or employees be restrained by an interlocutory injunction from alienating , wasting, damaging, selling, mortgaging, disposing, transferring or in any manner dealing with the suit property until the hearing and determination of this Application and/or until further orders of this honorable court.
5. The 3<sup>rd</sup> Defendant, her agents, servants and/or employees be restrained by an interlocutory injunction from alienating , wasting, damaging, selling, mortgaging , disposing , transferring or in any manner dealing with the suit property until the hearing and determination of this suit and/or until further orders of this honorable court.
6. That an eviction order do issue against the 3<sup>rd</sup> Defendant, her agents, servants and/or employees from the suit property pending the hearing and determination of this suit and/or until further orders of this honorable court.

7. That costs of this Application be provided for.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff, Julius Mailu Komu, sworn on 28<sup>th</sup> July 2015 in which he averred that he is the bona fide registered proprietor of the suit property. He annexed a copy of his title deed in proof of that assertion. He further averred that by a sale agreement dated 27<sup>th</sup> November 2013 between him and the 3<sup>rd</sup> Defendant (a copy of which he annexed), he agreed to sell the suit property to the 3<sup>rd</sup> Defendant at a price of Kshs. 3,100,000/-. He further stated that it was a term in that sale agreement that he would hand over the original title document over the suit property to the 3<sup>rd</sup> Defendant to enable her to secure a loan to pay off the purchase price. He further averred that it was also a term of that sale agreement that he would only transfer the suit property after the 3<sup>rd</sup> Defendant has paid the purchase price. He confirmed having released the original title deed over the suit property to the 3<sup>rd</sup> Defendant to enable her to secure the loan. He further stated that he also allowed the 3<sup>rd</sup> Defendant to take possession of the suit property immediately upon executing the sale agreement. He stated further that contrary to the sale agreement, the 3<sup>rd</sup> Defendant did not and has not paid the agreed purchase price for the suit property as a result of which he instructed his lawyers Messrs. P.N. Musila & Co. Advocates to follow up the issue on his behalf. He stated that his said lawyers wrote to the 3<sup>rd</sup> Defendant their letter dated 18<sup>th</sup> December 2014 demanding the payment of the purchase price which letter was responded by the 3<sup>rd</sup> Defendant through her lawyers Messrs. Kamolo & Associates Advocates who advised him to wait for the payment. He averred that to date, the 3<sup>rd</sup> Defendant has never paid the purchase price or any part thereof. He averred further that in January 2015, he conducted an official search of the suit property to confirm its status and was surprised when the search indicated that the 3<sup>rd</sup> Defendant had since been fraudulently registered as the proprietor of the suit property and a title deed issued in her name on or about 4<sup>th</sup> June 2014. He confirmed having reported this state of affairs to the CID Machakos who registered a restriction order pending investigation. He further confirmed having written to the County Land Registrar, Machakos intimating to him/her that he is the bona fide proprietor of the suit property and informing him/her that the transfer to the 3<sup>rd</sup> Defendant was effected fraudulently and therefore illegal, null and void. He further stated that he asked for copies of the transfer and consent to transfer lodged by the 3<sup>rd</sup> Defendant which culminated in her being registered as the proprietor of the suit property to which the County Land Registrar did not respond. He stated that unless the 3<sup>rd</sup> Defendant is restrained or prohibited by this court from alienating the suit property, he stands in danger of losing his proprietary interest in the suit property.

The Application is not contested. Despite being served, the Defendants/Respondents did not file any response. The Plaintiff/Applicant filed his written submissions.

The Plaintiff/Applicant prays for this court to issue both an order of inhibition as well as a temporary injunction to prevent the 3<sup>rd</sup> Defendant from dealing with the suit property in a manner detrimental to his interests therein. Both orders would serve the same purpose of preserving the suit property pending the hearing and determination of this suit.

**Section 68(1) of the Land Registration Act No. 3 of 2012** provides as follows:

**“The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”**

From where I stand, I have to say that the Plaintiff/Applicant has made out a formidable case to answer on the part of the 3<sup>rd</sup> Defendant. He has clearly shown and demonstrated how the 3<sup>rd</sup> Defendant became the registered proprietor of the suit property (which position has been seen in the official search on the suit property) without payment of the purchase price. The Defendants were duly served with this Application and given ample opportunity to respond thereto. They have not. I am satisfied that the Plaintiff/Applicant's interest in the suit property is in jeopardy for as long as the 3<sup>rd</sup> Defendant remains the registered proprietor thereof. Accordingly, I hereby issue an order of inhibition to be registered

against the title of the suit property to remain on the register until this suit is heard and determined.

In light of this, it is not useful to issue a temporary injunction. I decline to issue an eviction order pursuant to an interlocutory application such as this one.

It is so ordered.

**DELIVERED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF FEBRUARY 2016.**

**MARY M. GITUMBI**

**JUDGE**