



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO. 167 OF 2015**

**JAMLECK CHOMBA MWENJE.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**1. MUHAMED NGALA MWAGANDI**

**2. NGONYO MWAGANDI NGALA**

**3. DAVID MUMBA NGALA**

**4. GILBERT NGALA MWAGANDI**

**5. SULUBU NGALA MWAGANDI**

**6. DENNIS KATUMBO.....DEFENDANTS/RESPONDENTS**

**R U L I N G**

**Introduction:**

1. What is before me is the Application by the Plaintiff dated 22<sup>nd</sup> September, 2015. The Applicant is seeking for the following orders:-

(a) **THAT the Respondents, their servants, agents, employees and/or any other person claiming under them be restrained by way of temporary injunction from dealing, leasing, constructing, selling, cultivating, wasting, damaging, intruding, trespassing, developing and/or interfering with plot number Gongoni Settlement Scheme/3161 pending the hearing and determination of this suit.**

(b) **THAT cost of this application be provided for.**

**The Plaintiff's/Applicant's case:**

2. The Plaintiff has deponed that he bought part of a parcel of land known as Gongoni Settlement Scheme/3161 from the 1<sup>st</sup> – 4<sup>th</sup> Respondents vide a sale agreement dated 28<sup>th</sup> June, 2004; that the agreed purchase price was Kshs.39,375 which he paid and that at the time of the purchase, the Respondents did not have a title deed for the whole parcel of land.

3. According to the Plaintiff, he was issued with a title deed on 25<sup>th</sup> August 2011 and took possession of the suit property in the year 2004.
4. However, according to the Plaintiff's deposition, the Respondents want him to buy the suit property again by paying a higher amount.

**The Defendants' case:**

5. The 5<sup>th</sup> Defendant filed a Notice of Preliminary Objection in which he averred that the suit and the Application do not disclose a cause of action against him because he was not privy to the alleged agreement for sale of land; that he is not a son of the late Mwangadi Ngala and that the named vendors have never been registered as the owners of Gongoni Squatters Settlement Scheme/359.
6. According to the 5<sup>th</sup> Defendant, there is no plea or evidence to show that the impugned sale was sanctioned by the Board and that the issuance of the title deed to the Plaintiff is wrongful and in contravention of the Registered Land Act, the Land Adjudication Act and the Law of Succession Act.
7. The 1<sup>st</sup> – 4<sup>th</sup> Respondents filed Grounds of Opposition and a Preliminary Objection in which they averred that the agreement of sale of land which is the basis of the cause of action is not in compliance with Section 3(3) of the Law of Contract Act and that the agreement was made one year after the death of the registered proprietor.
8. According to the Defendants, the spouse of the deceased owner and some of his children were not involved in the agreement of sale; that the Land Control Board never gave its consent and that the District Land Adjudication and Settlement Office can not deal with land of a deceased person without letters of administration intestate.
9. The administrator of the Estate of Mwangadi Ngala (deceased), swore a Replying Affidavit and deponed that the suit property was allocated to their father in 1997; that the alleged purchase of Gongoni Settlement Scheme/359 by the Plaintiff from the named vendors is a fraud on the Estate of the deceased and that the Title that was issued to the Plaintiff has no relation with the original number.

**Plaintiff's Further Affidavit:**

10. In his Further Affidavit, the Plaintiff deponed that he purchased the suit property from the 1<sup>st</sup> -4<sup>th</sup> Respondents who had inherited the land from their father and that the family of the late Mwangadi Ngala appointed the four to represent the family.
11. It is the Plaintiff's case that the land he purchased had been mistakenly allocated number 359 instead of plot number 3161 and that he paid some money for outright purchase of the land.

**Submissions:**

12. The Plaintiff's counsel submitted that the Plaintiff is a purchaser having purchased the land on 28<sup>th</sup> June, 2004; that there were alteration of the parcel number on the agreement from Plot No. 359 to 3161 and that the changes were effected with the consent of the Defendants.
13. The Defendants' counsel submitted that the Defendants never transferred the suit property to the Plaintiff; that the plot number was altered; that the parties who signed the agreement dated 28<sup>th</sup> June, 2004 were not *id-idem* and had no authority to sign the agreement and that the said agreement is legally ineffectual for being contra-statute.
14. Counsel submitted that no one by the year 2004 had the authority to deal with the Estate of the deceased and that in any event, the purchase was not sanctioned by the Board.
15. Counsel submitted that if a statute is breached, then the contract of sale is illegal and unenforceable.

**Analysis and findings:**

16. The Plaintiff's suit and the Application are premised on the ground that the Plaintiff purchased the suit property from the Defendant on 28<sup>th</sup> June, 2004.
17. The Plaintiff has annexed on his Affidavit an agreement of sale dated 28<sup>th</sup> June, 2004 that was

- entered into between himself and the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendants.
18. In the agreement, the four purported vendors have described themselves as the heirs of their late father Mwangandi Ngala Mwangandi.
  19. In the agreement, the four Defendants acknowledged receipt of Kshs.39,375 being the purchase price.
  20. The agreement further stated that the vendors would jointly “make formal transfer of the plot to the buyer once documents are made available.”
  21. Other than the sale agreement, the Plaintiff has annexed a Title Deed for Gongoni Settlement Scheme 3161 that was issued to him on 25<sup>th</sup> August, 2011.
  22. The Plaintiff has not explained to this court how the Title Deed was issued to him directly considering that the letter of offer in respect of plot number 359, which I am informed is the same land that the Plaintiff is claiming, was allocated to the late Mwangandi Ngala Mwangandi on 31<sup>st</sup> August 1997.
  23. It is trite law that one cannot be issued with a Title Deed in a settlement scheme before being issued with a letter of offer.
  24. Although the Plaintiff has deponed that the Title Deed was issued to him after making payments to the SFT, the receipt exhibited by on David Mumba Ngala and Patric Charo shows that the payment of Kshs.4,000 was made to the SFT in the name of the late Mwangandi on 18<sup>th</sup> November, 2011. By this time, a Title Deed had already been issued in the name of the Plaintiff.
  25. The Plaintiff neither produced the Transfer documents nor the consent of the Board authorizing the transfer of the suit property.
  26. The Plaintiff has also not produced evidence to show that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendants had the *locus standi* to enter into the agreement of sale of 28<sup>th</sup> June, 2004 considering that by that time, the alleged vendors' father had died.
  27. By the time the agreement of June, 2004 was made, nobody had been appointed to represent the Estate of the allottee.
  28. The evidence before me shows that prima facie, the agreement of sale of 28<sup>th</sup> June, 2004 is legally ineffectual for being contra statute.
  29. The said agreement, as I have already stated, was entered into contrary to the provisions of Section 45 of the Law of Succession Act which prohibits any dealings with the Estate of a deceased person before the letters of administration are obtained and confirmed by the court.
  30. The sale of the suit property was sold, prima facie, without the sanction of the Board contrary to the provisions of Section 6 of the Land Control Act.
  31. In the circumstances, I agree with the Defendants' counsels' submissions that the Plaintiff has not come to court with clean hands and the Plaintiff is guilty of material non-disclosure.
  32. In the circumstances, I find and hold that the Plaintiff has not established a prima facie case with chances of success to enable this court grant him the prayers that he is seeking in his Application.
  33. For those reasons, I dismiss the Application dated 22<sup>nd</sup> September, 2015 with costs.

Dated, signed and delivered in Malindi this 6<sup>th</sup> day of **May**, 2016.

**O. A. Angote**

**Judge**