



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 69 OF 2016

JACINTA WANJIRU MWENGA.....PLAINTIFF

VERSUS

SAMWEL THEURI.....1ST DEFENDANT

LOISE WANGARE RATEMO.....2ND DEFENDANT

DISTRICT LAND REGISTRAR NAIVASHA.....3RD DEFENDANT

THE ATTORNEY GENERAL4TH DEFENDANT

RULING

(Application to stop dealings on property; plaintiff having been the initial registered owner; property now in name of 1st defendant; plaintiff claiming that the land was transferred to 1st defendant by way of fraud; no response by the 1st defendant; prima facie case established; orders to preserve the title issued)

1. This suit was commenced by way of a plaint which was filed on 4 March 2016. In the plaint, it is pleaded that the plaintiff is the legitimate owner of the land parcel Miti Mingi / Mbaruk Block 5/633 (Kianjoya). In the year 2012, the plaintiff borrowed a friendly loan from the 1st defendant of Kshs. 70,000/= to be repaid with an interest of 30%. It was agreed that as a sign of good faith she would deposit her title deed with the 1st defendant. The plaintiff however became sickly and was unable to pay the debt within time and it is pleaded that the parties mutually agreed to extend the time for repayment. In the year 2015, the 2nd defendant came to the premises purporting that the land belongs to her having purchased it from the 1st defendant. On investigations, the plaintiff discovered that the 1st defendant had transferred the suit land to his name. It is her view that this was done fraudulently. In the suit, the plaintiff seeks a declaration that she is the legitimate owner of the suit land, and an order to cancel the title of the 1st defendant.

2. Together with the suit, the plaintiff filed an application to restrain the 1st defendant from dealing, disposing off, transferring, charging, alienating or in any other way interfering with the suit property, pending hearing and determination of the suit.

3. The 1st defendant did not file anything to oppose the application. It emerged in the course of the proceedings that there was another suit being *Nakuru CMCC No. 2 of 2016, Loise Wangare Ratemo vs Samwel Mwangi Theuri and Jacinta Wanjiru*. The plaintiff in that case is the 2nd defendant herein. The two defendants are the 1st defendant and plaintiff in this suit respectively. In that suit, the said Loise is seeking an order of specific performance to enforce an agreement that she had with Samwel Mwangi over the sale of the suit land.

4. In her suit, the plaintiff has averred that there is no way the property could have been lawfully transferred to Samwel since she never executed any instrument of transfer. She has also asserted that she never appeared before any Land Control Board for consent.

5. As I mentioned, Samwel has not refuted these allegations by filing a rebuttal. In my view the plaintiff has made out a prima facie case. I note that the application as drawn only seek orders to preserve the title and nothing more. I do allow the application and order the 1st defendant not to sell, charge, lease, or in any other way deal with the land parcel Miti Mingi/Mbaruk Block 5/633 (Kianjoya) pending hearing and determination of this suit. I also issue an order of inhibition, inhibiting the registration of any disposition in the register of the said land pending hearing and determination of this suit.

6. The costs of this application will be shouldered by the 1st defendant.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of September 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Ms. Alwala holding brief for Mr. Githui for 2nd defendant

No appearance on part of Mrs Mukira for plaintiff/applicant

No Appearance on part of 1st, 3rd and 4th defendant

C/Asst. Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU