



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO. 47 OF 2015**

**SERAH CHELE BOIT** (*suing as the Administrator and Legal representative of the estate of the late SAMUEL KIPEL BOIT*).....**PLAINTIFF**

=VERSUS=

**1. MIRIAM CHEROP CHUMO**

**2. ISMAEL HASSAN**

**3. THE LAND REGISTRAR COAST REGISTRY**.....**DEFENDANTS**

**RULING**

**Introduction:**

1. The Application by the Plaintiff dated 31<sup>st</sup> March, 2015 is seeking for the following orders:-

- (a) **THAT the 1<sup>st</sup> and 2<sup>nd</sup> Respondents either by themselves or through their servants or agents be restrained and prohibited from selling, transferring, alienating, charging, dealing or otherwise interfering with the suit property known as Land Reference No. 2096 CR.14325 pending the hearing and determination of the suit.**
- (b) **THAT the 3<sup>rd</sup> Respondent be restrained and prohibited from registering any transfer or other interest against the suit property known as Land Reference No.2096 CR.14325 pending the hearing and determination of the suit.**
- (c) **THAT the status quo, being that the Plaintiff/Applicant is and continues to be in possession and enjoy use, control and ownership of the suit property known as Land Reference No.2096 CR.14325, be maintained pending the hearing and determination of this Application.**
- (d) **THAT the 3<sup>rd</sup> Respondent be ordered to produce for inspection by this Honourable Court the Land Registry file for suit property known as Land Reference NO.2096 CR.14325 at the hearing of the main suit.**
- (e) **THAT the cost of this application be given to the Plaintiff/Applicant.**

2. The Application is premised on the ground that the Applicant is the Administrator and legal Representative of the Estate of the late Samuel Kiplel Boit who is the registered proprietor of LR. No. 2096.
3. According to the Applicant, her, together with the deceased who was her husband, built a stone house on the suit property; that the 1<sup>st</sup> Defendant is purporting to be the owner of the suit property and that the title document that the 1<sup>st</sup> Defendant is holding is a forgery because by the time it is purported that her late husband sold the land, he had already died.
4. It is the Applicant's case that she has been unable to obtain the official search because the file cannot be traced at the Lands office.
5. In her Replying Affidavit, the 1<sup>st</sup> Defendant deponed that she is the registered proprietor of the suit property; that she had a long relationship with the deceased and that in January 1986, the deceased transferred the suit property to her as a gift by signing the Transfer on 20<sup>th</sup> January, 1989 before an advocate.
6. The 1<sup>st</sup> Defendant deponed that before she could lodge the transfer document for registration, the deceased died in a road accident and that it was not until 8<sup>th</sup> July, 1997 that she was able to secure money and lodge the transfer document for registration.
7. According to the 1<sup>st</sup> Defendant, the suit property does not form part of the Estate of the deceased and that the Certificate of Confirmation of grant confirms that.
8. I have considered the submissions that have been filed by all the parties.
9. Although the 1<sup>st</sup> Defendant is the registered proprietor of the suit property, the Plaintiff's case is that the 1<sup>st</sup> Defendant had the suit property registered in her favour fraudulently.
10. Indeed, the 1<sup>st</sup> Defendant has not denied that the Plaintiff is the administrator of the Estate of the late Samuel Kiplep Boit who purportedly transferred the suit property to her as a gift.
11. Considering the serious issue of fraud that has been raised by the Plaintiff viz-a-viz how the suit property was registered in favour of the 1<sup>st</sup> Defendant way after her husband had died, it is prudent and equitable to restrain the 1<sup>st</sup> Defendant from selling or alienating the suit property pending the hearing and determination of the suit.
12. Indeed, the 1<sup>st</sup> Defendant has not denied the allegation by the Plaintiff that she has the intention of selling the suit property.
13. The 1<sup>st</sup> Defendant has also not denied that it is the Plaintiff who is in possession of the suit property. Consequently, the balance of convenience tilts in favour of the Plaintiff.
14. It is for the reasons I have given above that I allow the Application dated 31<sup>st</sup> March, 2015 in terms of prayer numbers 5, 6 and 9.

Dated, signed and delivered in Malindi this **16<sup>th</sup>** day of **September**, 2016.

**O. A. Angote**

**Judge**