



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CIVIL CASE NO.123 OF 2014**

**1. ZAIN-UL-ABDIN SALEH**

**2. NOSHEEN FAROOK**

**AWAN.....PLAINTIFFS**

**=VERSUS=**

**1. DAVID MAMURE NYUNDO**

**2. MR. PIERO**

**3. LEMMY**

**MBOGORI.....DEFENDANTS**

**R U L I N G**

1. In their Application dated 25<sup>th</sup> June, 2014, the Plaintiffs are seeking for the following orders:-

**(a) An injunction restraining the defendants from selling, leasing, licencing, constructing or disposing any property interest in the suit properties to the defendants herein or any other person or in any other way dealing or interfering with the title and possession of parcel of land known as Plot Number L.R. Nos 21967 and 21968, the suit properties herein pending the hearing and determination of this suit.**

**(b) Costs of this Application be provided for.**

2. The 1<sup>st</sup> Plaintiff swore an Affidavit in which he deponed that on 22<sup>nd</sup> August, 2011, him, together with this wife, the 2<sup>nd</sup> Plaintiff, entered into an agreement of sale of land with the 1<sup>st</sup> Defendant for land known as L.R. Nos. 2196 and 21968; that the parties agreed that the 1<sup>st</sup> Defendant would use part of the purchase price to secure title deeds and that they duly paid a deposit of Kshs.1,000,000.

3. It is the Plaintiffs' case that the balance of the purchase price of Kshs.5,500,000 was to be paid upon registration of the transfer of land to them and that the sale was to be completed within 3 months.

4. The 1<sup>st</sup> Plaintiff has deponed that upon checking with the land registry, he discovered that the title documents were issued to the 1<sup>st</sup> Defendant on 1<sup>st</sup> February, 2013.

5. Despite the agreement the two parties had, it is the Plaintiffs' case that the 1<sup>st</sup> Defendant entered into another sale agreement with the 2<sup>nd</sup> Defendant and the 3<sup>rd</sup> Defendant and that the 3<sup>rd</sup> Defendant is in the process of erecting some semi-permanent structures on the suit property.
6. In response, the 1<sup>st</sup> Defendant admitted that indeed, he entered into an agreement for sale of the suit property with the Plaintiffs on 22<sup>nd</sup> August, 2011; that he later on realised that the title documents were issued to him irregularly and that the National Land Commission has since directed him to surrender the title documents.
7. It is the 1<sup>st</sup> Defendant's case that the orders being sought by the Plaintiffs are incapable of being granted because he is no longer the owner of the suit properties.
8. On his part, the 2<sup>nd</sup> Defendant deponed that the Plaintiff is seeking for specific performance from an agreement which is null and void; that he is an innocent purchaser for value having purchased the land from the 1<sup>st</sup> Defendant vide an agreement dated 11<sup>th</sup> August, 2010 and that the orders being sought by the Plaintiffs will infringe on his rights to own the suit property.
9. The advocates for the Plaintiffs and the Defendants filed their brief submissions which I have considered.
10. The Plaintiffs' claim is that they purchased the suit properties from the 1<sup>st</sup> Defendant vide an agreement dated 22<sup>nd</sup> August, 2011. By this time, it is the Plaintiffs' case that the 1<sup>st</sup> Defendant was in possession of a letter of allotment.
11. The Plaintiffs have deponed that pursuant to the said agreement, they paid to the 1<sup>st</sup> Defendant a deposit of Kshs.1,000,000 to enable him process the title documents.
12. The 1<sup>st</sup> Defendant has admitted that indeed he agreed to sell to the Plaintiffs the suit properties.
13. It is the 1<sup>st</sup> Defendant's case that he later learnt that the title documents were irregularly issued to him and that he has been directed by the National Land Commission to return the title documents to the Registrar of Title for cancellation.
14. The 2<sup>nd</sup> Defendant on the other hand has claimed that he also bought the suit properties from the 1<sup>st</sup> Defendant.
15. The 1<sup>st</sup> Defendant has not denied that he was paid a deposit of Kshs.1,000,000 by the Plaintiffs. The 1<sup>st</sup> Defendant has also not denied that he was to transfer the suit properties to the Plaintiffs upon obtaining the titles.
16. The 1<sup>st</sup> Defendant has not informed this court why he had to sell the suit properties not only to the Plaintiffs but also to the 2<sup>nd</sup> Defendant.
17. Although the 1<sup>st</sup> Defendant has deponed that he has since discovered that the title documents were irregularly issued to him, it is not clear to this court why he sold the suit property to the Plaintiff in the first place if he knew that the land did not belong to him.
18. Having admitted that he entered into an agreement of sale with the Plaintiffs, and having being paid a deposit of Kshs.1,000,000, this court finds that the Plaintiffs have established a prima facie case with chances of success.
19. The issue as to whether the suit property belonged to the 1<sup>st</sup> Defendant at the time of the purported sale can only be determined after the hearing of the suit.

20. Indeed, unless, the injunctive order is issued, the suit property is likely to be transferred to third parties thus causing the Plaintiffs irreparable injury that cannot be compensated by damages.

21. It is for those reasons that I allow the Application dated 25<sup>th</sup> June, 2014 as prayed.

Dated, signed and delivered in Malindi this **14<sup>th</sup>** day of **October**, 2016.

**O. A. Angote**

**Judge**