



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

**AT MALINDI**

**ELC CIVIL CASE NO. 228 OF 2015**

**PAUL WAMBUGU NDIRANGU.....PLAINTIFFS**

**=VERSUS=**

**1. ANDREW PETER NDIRICI**

**2. PURITYWANGUI KURIA**

**3. GIRIAMA CENTRAL ASSOCIATION & PROPERTY MANAGMENT LTD**

**4. WANGECI NDUMO**

**5. COUNTY LAND REGISTRAR, KILIFI COUNTY**

**6. THE HON. ATTORNEY GENERAL.....DEFENDANTS**

**R U L I N G**

1. The Application before me is the one dated 8<sup>th</sup> December, 2015. In the Application, the Plaintiff is seeking for the following orders:-

**(a) THAT a general inhibition is issued to inhibit registration of any dealings with Kilifi/Mtwapa/4270, 4271 and 4272 and all subdivisions created from plot Kilifi/Mtwapa/1344, until the hearing and determination of the suit, or until further orders of this court.**

**(b) THAT costs of the Application to be provided for.**

2. According to the Plaintiff's Affidavit, he resides on parcel of land known as Kilifi/Mtwapa/4270, which is one of the subdivisions created from plot 1344, the property of Schmidt Herman Detlef (deceased); that by a written agreement dated 13<sup>th</sup> November, 2014, the deceased agreed to sell to him plot 4270 for Kshs.3.5 Million and that the vendor died on 13<sup>th</sup> February, 2015 and his remains were interred on plot 4270.

3. The Plaintiff deponed that in early April, 2015, he learnt that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had been registered as owners of Kilifi/Mtwapa /4270; that he has since learnt that the 3<sup>rd</sup> Defendant purchased plot Kilifi/Mtwapa/1344 for Kshs.3.0 Million and that the transaction of 15<sup>th</sup> March, 2015 is a fraud on him and other persons interested in the property.

4. According to the Plaintiff, the purported agreement between the deceased and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants is fraudulent because the deceased did not enter into any agreement of sale with the said Defendants; that the Bahari Land Control Board did not sanction the instrument of transfer registered on 25<sup>th</sup> March, 2015 and that from the documents that the deceased handed over to his children, the 3<sup>rd</sup> Defendant had not completed payment of the purchase price of Kilifi/Mtwapa/1344.
5. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants' filed a Preliminary Objection in which they averred that this court lacks jurisdiction to hear and determine the motion and the main suit and that the suit is an abuse of the court process as it is subjudice Mombasa CMCC No.455 of 2015.
6. In her Replying Affidavit, the 2<sup>nd</sup> Defendant deponed that on 17<sup>th</sup> October, 2012, the 3<sup>rd</sup> Defendant and the deceased entered into a sale agreement for plot no.Kilifi/Mtwapa/1344 at a consideration of Kshs.3,000,000; that another agreement was executed on 2<sup>nd</sup> September, 2014 wherein it was agreed that the 3<sup>rd</sup> Defendant was only purchasing a portion of plot 1344 and that the deceased obtained the requisite consents to subdivide the property and transfer a portion thereof known as Kilifi/Mtwapa 4270.
7. According to the Respondents, the deceased executed a transfer before his demise and the same was lodged at the Kilifi Lands Registry in the presence of the 5<sup>th</sup> Respondent.
8. The 4<sup>th</sup> Defendant deponed that she is the biological mother of Mary Nyawira Schmidit who died on 30<sup>th</sup> September, 2011; that her daughter was married to the alleged vendor who died on 13<sup>th</sup> March, 2015 and that her daughter was registered as the proprietor of Plot No. 1344.
9. According to the 4<sup>th</sup> Defendant, by dint of the succession having never been done in respect to the Estate of her daughter, all transactions in respect of the suit property are null and void and that the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were the subject of an elaborate con and have discovered that the vendor misrepresented himself as the legal owner of the suit property.
10. The Plaintiff's advocate submitted that the Plaintiff has exhibited an agreement to show that he purchased Kilifi/Mtwapa/4270; that he is the one in physical possession of the land and that his possessory rights and the purchaser's equity may be defeated if the current registered owners were allowed to deal with the land in the interim.
11. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' advocate submitted that the Applicant has not demonstrated any threat from the Defendant that would warrant the granting of the order of inhibition.
12. The 4<sup>th</sup> Defendant's advocate submitted that there is no evidence that the Plaintiff paid to the vendor Kshs.3,500,000; that it is the 4<sup>th</sup> Defendant who had priority under the Law of Succession Act to take out grant of representation and that the Plaintiff has not established the principles for the grant of injunction.
13. The Plaintiff's case is that vide an Agreement dated 13<sup>th</sup> October, 2014, he purchased a subdivision of plot number Kilifi/Mtwapa/1344 for Kshs.3,500,000 from the late Hermann Detleft Deutsch.
14. It is the Plaintiff's case that he was put in possession of the land and that before the completion of the Agreement, the vendor died. According to the Plaintiff, by the time the vendor died, he had paid Kshs.2.5 Million.
15. According to the Agreement that the Plaintiff entered into with the vendor, he was to pay the balance of Kshs.350,000 from November, 2014 to April 2015 of every month. The Agreement shows that at the time of signing the agreement, the vendor had received Kshs.1.4 Million from the Plaintiff.
16. The Agreement of 13<sup>th</sup> October, 2014, was duly executed and attested. The same was registered as a document in the registry of documents on 27<sup>th</sup> March, 2015.

17. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also claim that they purchased the suit property from the deceased and executed the agreements of 17<sup>th</sup> October, 2012 and 2<sup>nd</sup> September, 2012.

18. According to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, a total of Kshs.900,000 was paid to the vendor and the balance of the purchase price was to be paid upon completion.

19. The 4<sup>th</sup> Defendant on the other hand states that the vendor had no legal capacity to sell the suit property.

20. The copy of the extract of the register shows that on 13<sup>th</sup> December, 2001, parcel of land number Kilifi/Mtwapa/1344 was registered in favour of Mary Schmdt. On 22<sup>nd</sup> July, 2013, the property was registered in favour of Schmidt Hermann Detleft who proceeded to have the land subdivided into plot Nos 4270, 4271 and 4272.

21. The register shows that on 25<sup>th</sup> March, 2015, parcel of land number Kilifi/Mtwapa/4270 was transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

22. Although the Transfer documents annexed on the Defendants' Affidavit shows the transferee as Giriama Central Association and Properties Management, it is not clear how and why the Title Deed was issued in the names of Andrew Peter Ngirach and Purity Wangui Kuria.

23. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants have also not responded to the allegations raised by the Plaintiff on the issue of whether the consent of the Board was ever obtained before the transfer of the suit property was effected.

24. Considering that it is the Plaintiff who is in possession of the suit property, and in view of the allegations that the deceased sold the suit property to two different people and the counterclaim that the deceased did not have the legal mandate to sell the land in the first place, it will be safe and just to issue an order of inhibition to prevent any dealings in the suit property pending the hearing and determination of the issues raised in the Plaintiff.

25. For those reasons, I allow the Application dated 8<sup>th</sup> December, 2015 in the following terms:-

**(a) A general inhibition be and is hereby issued to inhibit registration of any dealings with parcel of land known as Kilifi/Mtwapa/4270, 4271 and 4272, all subdivisions created from plot Kilifi/Mtwapa 1344, until the hearing and determination of this suit.**

**(b) The costs of the Application to await the outcome of the suit.**

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

**O. A. Angote**

**Judge**