



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC NO. 508 OF 2015**

**NDUNDE INVESTMENTS LIMITED.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**JACKSON MUTUGI MWANGI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**FRANCIS GITHAMBO WAMBURI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff in its application dated **9<sup>th</sup> June 2015**, seeks an order that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be restrained from entering the premises on

**LR No. Ruiru Township/239** or remaining thereon, selling, offering for sale or in any other way attempting to alienate the suit premise from the Plaintiff pending the hearing and determination of the suit.

The application is premised on the grounds outlined there under and supported by an affidavit sworn by **Isaac Gichia Mbugua**, the Managing Director of the Plaintiff. The Plaintiff's case as deposed in the affidavit is that the Plaintiff is the registered owner of the suit property as evidenced by the copy of title dated **9<sup>th</sup> August 2001**, annexed and marked "**IGM1**" and has been in occupation since then to date. However, that the Plaintiff has learnt that there is another title annexed and marked "**IGM2**" illegally and fraudulently issued to the Defendants. The deponent referred to an official search dated **16<sup>th</sup> April 2015**, and a copy of the green card for the said property which indicates that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were registered as proprietors and issued with a certificate of lease on **12<sup>th</sup> February 2015**. It is deposed that the Plaintiff has never transferred or dealt with the land in any way in favor of the Defendants. Therefore, that the Defendants actions are illegal and fraudulent and there is need for orders of injunction to restrain any further transactions in respect of the property.

The 1<sup>st</sup> Defendant swore a replying affidavit on **16<sup>th</sup> July 2015**, in opposition to the application. The 1<sup>st</sup> Defendant deposed that they are the registered owner of the suit property their title having been validly and legally issued by the 3<sup>rd</sup> Defendant. Further, that they have been in occupation of the premises since **2009** and have over the years leased out the property to various tenants who cultivate the same for their own benefit. It was deposed that it is the Plaintiff who has manipulated the entries in the green card to falsely indicate that it was the registered owner. The deponent contended that the entries in the green card

and the Certificate of Lease issued in their favor on **12<sup>th</sup> February 2015**, are in tandem which fact proves beyond peradventure that their title is not only valid but genuine.

The application was canvassed by way of written submissions which I have carefully read. The Defendant made an allegation that **Isaac Gichia Mbugua** claims to be the Managing Director of the Plaintiff but is an imposter as he is neither a Director nor shareholder of the Plaintiff per the records in the Company's Registry. It was his deposition that the said **Isaac Gichia Mbugua** has no authority or capacity to swear an affidavit on behalf of the Plaintiff. In response, the Plaintiff swore a Supplementary Affidavit and annexed thereto were copies of a search and memorandum and articles of association which shows that **Isaac Gichia Mbugua** is a Director and has one share in the Plaintiff. In the submissions, the Defendants submitted that there was a disparity in the name, address, and signature of the said Director appearing in the search, memorandum and articles of association and the affidavits filed in court. The Defendant's allege that the search contains the name '**Isaac**' whereas the memorandum and articles of association has the name '**Isack**'. Further, the Director's signature in the memorandum and articles of association is different from the one in the affidavits sworn by him and filed in court. The Defendants contend that the said Director is using fraudulent documents to lay claim to the suit property.

I have perused the copies of the official search and memorandum and articles of association. There is no doubt that the name 'Isaac' appears as 'Isack' in the later document. A cursory look signature also is different from the affidavits sworn by him. As to whether **Isaac Gichia Mbugua** is an imposter is a matter to be determined on trial upon the court being furnished with further evidence.

In respect of the injunction orders, the Plaintiff contends to be the lawful owner thereof and in possession of title thereto dated **9<sup>th</sup> August 2001**. Further that it has been paying land rates to Kiambu County Government upon demand. The Defendants on their part also have title to the property issued on **20<sup>th</sup> February 2015**. A search carried out by both parties reveals that the Defendants are the current registered proprietors, which the Plaintiff maintains is illegal and fraudulent as it has never transferred its property to the Defendants.

**Section 26** of the **Land Registration Act** provides that a certificate of title is deemed to be conclusive evidence of proprietorship. In this instance, however, both parties have titles to the leasehold interest in the suit property. It is my considered view that this is a case that can only be determined upon trial where further evidence can be adduced and its veracity tested through cross-examination. The Court of Appeal in the case of **Munyu Maina Vs Hiram Gathiha Maina, Civil Appeal number 239 of 2009** held that ***,where a party's certificate of title is under challenge, it is not enough to wave the instrument of title as proof of ownership but prove the legality of how he acquired the title. In the meantime, it would be imperative for the Court to preserve the suit property to facilitate a just and expeditious disposal of the suit.***

In that regard, and pursuant to the provisions of **Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act** the Court hereby enters an order of **status quo** to be maintained by the parties herein to the effect that both the Plaintiff and the Defendants by themselves or through their representatives, agents or servants are restrained from ***selling, transferring, leasing, charging,*** undertaking developments or in any other manner alienating or disposing of the land parcel known as **LR No. Ruiru Township/239** pending the hearing and determination of the suit filed herein or until further orders.

In a nutshell, the Court declines to allow the Plaintiff's Notice of Motion dated **9<sup>th</sup> June 2015**, but enters **status quo order** in the above terms.

Costs of the application be in the cause.

It is so ordered.

**Dated, Signed and Delivered this 2<sup>nd</sup> day of December, 2016**

**L. GACHERU**

**JUDGE**

In the Presence of:-

None attendance for the Plaintiff though notified

None attendance for the Defendant though notified

Vincent : Court Clerk

**Court:**

Ruling read in open Court in the absence of the respective advocates though notified.

**L. GACHERU**

**JUDGE**