



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO 19 OF 2014**

**KAMAU JAMES NJENDU .....PLAITNIFF**

**VERSUS**

**SERAH WANJIRU MBURU**

**REGISTRAR OF TITLES, NYANDARUA.....DEFENDANT**

**RULING**

***(Application for injunction; plaintiff contending that he is owner of suit land; defendant apparently with parallel title; prima facie case established; injunction granted)***

1. This suit was commenced by way of plaint filed on 4 February 2014. It is the plaintiff's case that he was allocated by the Director of Land Adjudication and Settlement, a plot No. 565 in Mutonyora Settlement Scheme, which later became land parcel Nyandarua/Mutonyora/565 (the suit land). The Settlement Fund Trustees then transferred to the plaintiff the suit land and he became registered as sole proprietor on 7 October 2008. However, on 23 November 2013, when the plaintiff did a search of the property at the Lands Office, he discovered that the suit property is now registered in the name of the 1st defendant. It is the position of the plaintiff that the title of the 1st defendant is a pure forgery and was procured by fraud in collusion with the 2nd defendant. In the suit, the plaintiff inter alia wants an order of cancellation of the title of the 1st defendant.

2. Together with the plaint, the plaintiff filed an application seeking to restrain the defendant from occupying the suit land or dispossessing the plaintiff, or in any other way interfere with the suit property, pending hearing and determination of this suit. To the supporting affidavit, the plaintiff annexed a copy of his title deed and the transfer from the Settlement Fund Trustees.

3. None of the defendants filed any document to oppose the application. On the date of the hearing of the application, Ms Wambui Kariuki for the State Law Office, stated that the 2nd defendant is not opposing the application. So far, the 1st defendant has not entered appearance to this suit and she was not represented at the hearing of the application. Mr. Kisilah, counsel holding brief for Mr. Kanyi for the applicant, urged me to allow the application.

4. I have considered the application. I have seen that the plaintiff appears to have been allotted the suit land by the Settlement Fund Trustees and the land was later transferred to him. He seems to hold a title deed to the suit land. The 1st defendant, who is the person holding a parallel title, has not filed any papers to oppose the application and I cannot therefore tell if her title is authentic. Having demonstrated that he has a title deed to the suit land, I am of the view that the plaintiff has demonstrated a prima facie case. I

am of the view that this is a fit case for the issuance of an injunction. I therefore make the following orders; that pending hearing and determination of this suit :-

*(i) The defendants are barred from entering, being upon, evicting, or in any other way interfering with the possession and occupation of the plaintiff over the land parcel Nyandarua/Mutonyora/565.*

*(ii) That there is hereby issued an order of inhibition, inhibiting the registration of any disposition in the register of the land parcel Nyandarua/Mutonyora/565.*

*(iii) That costs of this application shall be costs in the cause.*

It is so ordered.

**Dated signed and delivered in open court at Nakuru this 5<sup>th</sup> day of March 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT AT NAKURU**

**In Presence of :-**

Mr Njoroge Mwaniki holding brief for Mr Kisilah for applicant

No appearance for defendants/respondents

Emmanuel Maelo : CA

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT AT NAKURU**