



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

**AT MALINDI**

**ELC CIVIL CASE NO.32 OF 2015**

ASUNTA DE ANGELIS.....PLAINTIFF

=VERSUS=

**1. KAMBI KADENGE ZIRO**

**2. LAWRENCE ZIRO**

**3. AZZURI LIMITED.....DEFENDANTS**

**R U L I N G**

**Introduction:**

1. The Application before me is the one dated 23<sup>rd</sup> February 2015. In the Application, the Plaintiff is seeking for the following orders:

**(a) That an interlocutory injunction do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, servants, employees, and/or agents, or any other party from transferring, conveying and/or selling the said property to the 3<sup>rd</sup> Defendant and or any other party and/or otherwise encroaching, trespassing, constructing, clearing, fencing and/or interfering with the peaceful enjoyment of all that property known as CHEMBE/KIBABAMSHE/356 pending the hearing and determination of this suit.**

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

**The Plaintiff's/Applicant's case:**

2. The Plaintiff has deponed that on 5<sup>th</sup> March, 2010, together with his deceased husband, they conveyed their interest to purchase 3 acres of the suit property known as Chembe/Kibabamshe/356 from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
3. The Plaintiff has deponed that vide a Memorandum of Understanding dated 5<sup>th</sup> March, 2010, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants received a sum of Kshs.515,000 as a deposit and that she has not been able to process the required documents from Italy giving her authority to sue on behalf of her late husband.
4. It is the Plaintiff's deposition that she took possession of the suit property after entering into

- further agreements dated 23<sup>rd</sup> August 2013 and 16<sup>th</sup> September 2013.
5. The Plaintiff's case is that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have now sold the suit property to the 3<sup>rd</sup> Defendant who has entered into the property.

**The Defendants' case:**

6. The 1<sup>st</sup> Defendant deponed that the orders being sought by the Plaintiff have been overtaken by events given that the said suit property has been sold to the 3<sup>rd</sup> Defendant and a title deed issued on 31<sup>st</sup> October 2014.
7. According to the 1<sup>st</sup> Defendant, he was not a party to the Memorandum of Understanding of 5<sup>th</sup> March 2010; that the said Memorandum of Understanding provided the remedies that the Plaintiff had in the event the 2<sup>nd</sup> Defendant does not procure a title deed and that the 2<sup>nd</sup> Defendant begun defrauding members of the public by using fake titles and obtaining money by false pretenses.
8. The 2<sup>nd</sup> Defendant filed Grounds of Opposition in which he averred that the Application does not meet the express requirements of granting an injunction and that the contract in question was not sanctioned by the Land Control Board.
9. The 3<sup>rd</sup> Defendant's Director on the other hand deponed that the 3<sup>rd</sup> Defendant is an innocent purchaser for value having had no notice at all of the Plaintiff's purported claim; that the 3<sup>rd</sup> Defendant purchased the suit property on 14<sup>th</sup> June 2014 for Kshs.18,900,000 and that the title deed was issued to the 3<sup>rd</sup> Defendant on 31<sup>st</sup> October 2014.
10. The advocates for the Plaintiff and the Defendants filed their respective submissions which I have considered.

**Analysis and findings:**

11. In the Plaint, the Plaintiff is seeking for a declaration that she has purchased interests in the suit property and for a permanent injunction against the Defendants from trespassing on the suit property.
12. The Plaintiff has not prayed in the Plaint for an order of specific performance. It is not clear to this court what would follow after the Plaintiff's prayers in the suit are allowed, if at all.
13. The evidence before me shows that before the suit was filed, the title deed in respect to the suit property had been issued to the 3<sup>rd</sup> Defendant.
14. There is no claim in the Plaint to have the title deed issued to the 3<sup>rd</sup> Defendant cancelled. Indeed, there is no privity of contract between the Plaintiff and the 3<sup>rd</sup> Defendant in respect to the suit property.
15. Having entered into a Memorandum of Understanding with the 2<sup>nd</sup> Defendant in which the 2<sup>nd</sup> Defendant received Kshs.515,000 to enable him acquire the title document, the Plaintiff's recourse is as against the 2<sup>nd</sup> Defendant for a refund of the said sum.
16. The circumstances of this case do not allow the court to issue an injunction as against the 3<sup>rd</sup> Defendant having purchased the suit property and a title deed issued to it. The Plaintiff has neither shown, prima facie, that the issuance of the title deed to the 3<sup>rd</sup> Defendant was fraudulent nor applied for the cancellation of the said title deed.
17. For those reasons, I dismiss the Plaintiff's Application dated 23<sup>rd</sup> February 2015, with costs.

Dated and delivered in Malindi this 3<sup>rd</sup> day of July 2015.

**O. A. Angote**

**Judge**