



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

**AT MALINDI**

**ELC CIVIL CASE NO.226 OF 2014**

**MIRIAM MUKAMI NDWIGA.....PLAINTIFF/APPLICANT**

**VERSUS**

**SIMHI AZMON**

**JAMES MAROKO OSIEMO.....DEFENDANTS/RESPONDENTS**

**R U L I N G**

1. What is before me is the Application by the Plaintiff dated 2<sup>nd</sup> December 2014 seeking for the following orders:
  - (a) **THAT this matter be certified urgent and service of the same be dispensed with in the first instance.**
  - (b) **The Hon. Court be pleased to order for the caveat/inhibition to be placed over parcel No.1705/359 (original No.1705/84/24) pending the hearing of this application interpartes.**
  - (c) **That the Hon. Court be pleased to issue any order of injunction restraining the Defendants, their agents, assigns or anybody acting on their behest from entering, evicting, trespassing or in any other manner interfering with the Plaintiff's peaceful and utilization of parcel No.1705/359 (original No.1705/84/24) until this application is heard interpartes.**
  - (d) **That this Hon. Court do confirm prayers, a, b, and c above until this suit is heard and determined.**
2. The Application is premised on the grounds that the Plaintiff and her family lives on the suit land; that the 2<sup>nd</sup> Defendant who is the Plaintiff's husband has sold to the 1<sup>st</sup> Defendant the family land and that the Plaintiff does not have any other place to go if evicted.
3. In his Replying Affidavit, the 2<sup>nd</sup> Respondent deponed that the 1<sup>st</sup> Defendant offered him a friendly loan of Kshs.400,000; that he was unable to refund the said amount as agreed and that the 1<sup>st</sup> Defendant through administration authorities intimidated him and that he signed the transfer documents out of fear.
4. According to the 2<sup>nd</sup> Respondent, the transfer of the suit property was not freely executed but was obtained through duress.

5. The 2<sup>nd</sup> Defendant denied ever attending the Land Control Board to obtain the consent to transfer the property.
6. On his part, the 1<sup>st</sup> Defendant deponed that he is the registered proprietor of the suit property having purchased it from the 2<sup>nd</sup> Defendant at a consideration of Kshs.417,000.
7. According to the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant sold the suit property out of his own volition.
8. The parties' advocates filed brief submissions. The said submissions are a reiteration of the depositions in the affidavits. I have considered the said submissions and the authorities.
9. It is not in dispute that the 2<sup>nd</sup> Defendant, who is the Plaintiff's husband was registered as the proprietor of the suit property on 14<sup>th</sup> July 2008.
10. According to the copy of the Certificate of Title annexed on the Application, the suit property was transferred in favour of the 1<sup>st</sup> Defendant on 18<sup>th</sup> June 2014.
11. Although the 2<sup>nd</sup> Defendant has annexed the sale agreement dated 3<sup>rd</sup> June 2011, between himself and the 1<sup>st</sup> Defendant in respect of the suit property, the 2<sup>nd</sup> Defendant has denied that he ever signed the agreement.
12. The 2<sup>nd</sup> Defendant has deponed that he signed the transfer document under duress and that the transfer of the suit property to the 1<sup>st</sup> Defendant was fraudulently done.
13. The 1<sup>st</sup> Defendant has not stated whether indeed a spousal consent was obtained before the suit property was transferred in his favour. In view of the provisions of section 93(3) and (4) of the Land Registration Act, a spousal consent is required before land can be transferred.
14. Indeed, in the absence of prove that the Plaintiff's consent was sought and obtained before the transfer of the suit property to the 1<sup>st</sup> Defendant, and in view of the 2<sup>nd</sup> Defendant's allegation that he signed the transfer document under duress, I find and hold that the Plaintiff has established a prima facie case with chances of success.
15. For those reasons, I allow the Application dated 2<sup>nd</sup> December 2014 in the following terms:

**(a) An order of injunction be and is hereby issued restraining the Defendants, their agents, assigns or anybody acting on their behest from entering, evicting, trespassing or in any other manner interfering with the Plaintiff's peaceful and utilization of parcel of land number 1705/359 (original number 1705/84/24) pending the hearing of the suit.**

**(b) The costs of the Application to be in the cause.**

Dated and delivered in Malindi this 25<sup>th</sup> day of **September** 2015.

**O. A. Angote**

**Judge**