



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

**CONST. PET. NO. 8 OF 2014**

**MARY MURIZA ONDATTO (*suing as the legal representative of the estate of LINUS JUMA ONDATTO*).....PETITIONER**

**=VERSUS=**

- 1. DISTRICT LANDS ADJUDCIATION AND SETTLEMENT OFFICER, KILIFI.....1ST RESPONDENT**
- 2. CHEIF REGISTRAR OF LANDS. .... 2ND RESPONDENT**
- 3. SAID T. SHEIK SAID..... 3RD RESPONDENT**

**R U L I N G**

1. What is before me is the Petitioner's Chamber Summons dated 10<sup>th</sup> November 2014 seeking for the following reliefs:

- (a) That pending the interpartes hearing of the Application a temporary order of injunction is issued restraining the 3<sup>rd</sup> Respondent either by himself, his agent, his employees and any other person on his behalf whomsoever and howsoever from alienating, selling, transferring, charging, mortgaging, entering into, trespassing unto, dealing in any way whatsoever and howsoever with KAWALA “B” ADJUDICATION SECTION PLOT NO. 118.
- (b) THAT pending the hearing and determination of this Petition an order of injunction is issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and either by themselves, their agents, their employees and any other person on their behalf whomsoever and howsoever from issuing title deed or any other proprietorship documents or alienating, transferring, selling, entering unto, trespassing unto, dealing in any way whatsoever and howsoever with parcel of land known as KAWALA “B” ADJUDCIATION SECTION PLOT NO. 118.

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

2. According to the Affidavit of the Petitioner, she is the legal representative of the Estate of the late Linus Juma Ondato; that the late Mr. Ondato was her husband and that sometimes in the year 1993, her late husband purchased land situated at Mariakani from one Rosa Koli Magaga.

3. According to the Petitioner, the property that her husband bought became to be known as Kawala "B" Adjudication Section plot number 118 (the suit property) after adjudication; that in the year 2011, his brother, one Cyril Muhaji Ondato unlawfully commenced the process of having himself registered as the proprietor of the suit property and that she lodged an objection.

4. The Petitioner/Applicant has deponed that the District Land Adjudication and Settlement Officer rendered a decision in her favour and that when she went to the land office to confirm the status of the land, she was surprised when she was told that the title deed was to be issued in the name of the 3<sup>rd</sup> Defendant.

5. According to the Petitioner, the action of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to have the name of the 3<sup>rd</sup> Respondent inserted into the adjudication register is unlawful and fraudulent.

#### **The Respondent's case:**

6. The 3<sup>rd</sup> Respondent, Said T. Sheikh Said deponed that he entered into a sale agreement with Cyril Muhaji Ondatto in respect to the suit property on 3<sup>rd</sup> November 2010; that he purchased the parcel of land for Kshs.5,160,000 and that Cyril Muhaji Ondatto had purchased the land from one Rose Koli Mosenge on 12<sup>th</sup> January, 2008.

7. According to the 3<sup>rd</sup> Respondent, he had no knowledge about the Applicant's interest in the suit land; that he is a bonafide and absolute owner of the suit property and that when he conducted a search at the lands, he found the land was in the name of Cyril Muhaji.

#### **The Petitioner's/Applicant's response:**

8. The Petitioner/Applicant filed a Supplementary Affidavit annexing the Affidavit of Rose Koli Masege.

9. According to Ms Masege, she sold the suit property to the late Linus Juma Ondatto on 5<sup>th</sup> November 1993 for Kshs.300,000 and that she signed the sale agreement of 2008 believing that she was assisting the estate and dependents of the late Linus having been told by Cyril that that was the position.

#### **Submissions:**

10. The Petitioner's counsel submitted that by the time the 3<sup>rd</sup> Respondent entered into an agreement of sale with Cyril Muhaji Ondatto, the said Cyril had no right, interest or title to pass to the 3<sup>rd</sup> Respondent; that the said sale has not been completed and that the Petitioner shall suffer irreparably if the orders are not granted.

11. The 3<sup>rd</sup> Respondent's advocate submitted that his client innocently and without notice of impropriety bought the suit property from Cyril Muhaji; that the 3<sup>rd</sup> Respondent was not given an opportunity to ventilate his case before the Land Adjudication and Settlement Officer and that the name of the adjudication officer who handled the dispute has not been indicated in the Ruling.

12. The 3<sup>rd</sup> Respondent's advocate submitted that the Ruling of 23<sup>rd</sup> February 2011 by the Land Adjudication Committee remains unchallenged and that in any event, the Petitioner can be adequately compensated through an award of damages.

#### **Analysis and findings:**

13. The Applicant is seeking for conservatory orders in the nature of an injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from issuing a title deed to the 3<sup>rd</sup> Respondent in respect to parcel of land known as Kawale "B" Adjudication Section plot number 118 (the suit property).

14. The Petitioner's case is principally that her late husband, Linus Juma Ondatto, bought the suit property from Rose Koli Masege on 5<sup>th</sup> November 1993. The agreement of sale has been annexed on the Petitioner's Supporting Affidavit.
15. The said Rose Koli Masege has admitted in her affidavit that she entered into another sale agreement with the deceased's brother, Cyril Muhanji Ondatto vide an agreement dated 12<sup>th</sup> January 2008.
16. According to the Affidavit of Rose Koli, she entered into this second agreement after being convinced by Mr. Cyril Muhanji that he was handling the affairs of the late "Linus" who had passed away before the suit property could be adjudicated and registered in his name.
17. According to Rose Koli, the terms of the second agreement with Cyril were similar to the terms of the agreement that she entered into with the late Linus.
18. It would appear that after Rose Koli entered into the second agreement with Cyril in 2008, a dispute arose between Mr. Cyril and the wife of Linus.
19. The Land Committee heard the dispute on 17<sup>th</sup> December 2011 pursuant to the provisions of the Land Adjudication Act in Land Committee Case Number 106. In the dispute, Cyril Muhandi Ondatto was the Plaintiff while Mary Muriza Ondatto, the wife of Linus, was the Defendant.
20. After hearing both parties, the Land Committee allowed the Plaintiff's claim and directed as follows:
- "Case number 106 is allowed. Name of the defendant Mary Muriza Ondeto to be deleted from the register and those of Cyril Muhanji Ondetto are entered. Right of Appeal of 14 days granted with effect from 23<sup>rd</sup> February 2011."**
21. On the same day the Ruling was delivered, the register was changed to indicate the registered owner of the land to be Cyril Muhanji Ondetto.
22. The Petitioner's case is that she appealed against the Ruling of the Land Committee.
23. The Petitioner has annexed on her Affidavit the proceedings of the Land Adjudication and Settlement Officer dated 18<sup>th</sup> September 2012.
24. According to the undated and unsigned decision of the Land Adjudication and Settlement Officer, the objection by the wife of Linus was allowed.
25. The authenticity of the proceedings and the decision of the Land Adjudication and Settlement Officer has been challenged by the 3<sup>rd</sup> Respondent. Indeed, the said decision is neither dated nor signed by the concerned Land Adjudication and Settlement Officer.
26. However, whether the said decision forms part of the official records held by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents or not can only be dealt with at the hearing of the suit.
27. If it is true that the Land Adjudication and Settlement Officer overturned the decision of the Land Committee, pursuant to the provisions of the Land Adjudication Act, then the court is bound to intervene with a view of enforcing the said decision.
28. In the circumstances, I find and hold that the Petitioner has established a prima facie case with a likelihood of success. A conservatory order as prayed in the Application should therefore issue.
29. For those reasons, I allow the Application dated 10<sup>th</sup> November 2014 as prayed.

Dated and delivered in Malindi this **13<sup>th</sup>** day of **November** 2015.

**O. A. Angote**

**Judge**