



REPUBLIC OF KENYA
IN THE LAND AND ENVIRONMENT COURT
AT MOMBASA
CIVIL CASE NO. 4 OF 2013

SALIM SOUD ALI BIN SALIM

(ALSO KNOWN AS SALIM SOUD ALI BUSAIDI).....**PLAINTIFF**

- V E R S U S -

- 1. MJAD INVESTMENTS LIMITED**
- 2. COMMISSIONER OF LANDS**
- 3. CHIEF LAND REGISTRAR MOMBASA**
- 4. LAND REGISTRAR, MOMBASA**
- 5. THE ATTORNEY GENERALDEFENDANTS**

RULING

[1] The applicant prays for a temporary injunction preserving the suit properties to be issued restraining the 1 - 4th defendants by themselves, their servants, assignees and/or agents from selling, alienating, transferring, charging constructing, wasting or in any other manner whatsoever and howsoever dealing with land registers and properties known as Mombasa/Block/XX1 498, Mombasa/Block/XX1/151 and Mombasa Block/XX1/152 pending the hearing and determination of this suit. Further that the 1st defendant be compelled to show reasons why the registers of the aforesaid properties should not forthwith be rectified in the plaintiffs favour and finally that all rents accruing from the property in Mombasa/Block/XX1/498, 151 and 152 be deposited in Court. the application is supported by an affidavit of Salim Soud Ali who states inter alia that he is the administrator of the estate of Sir Ali Bin Salim El-Busaidi (deceased) having been granted letters of administration on 5th March 2010 in the Chief Kadhis Court at Mombasa vide Succession cause No. 167 of 2009 copy attached. He averred that he had valid title deeds of parcel no. 498,151 and 152 copies of the same are attached. He averred that as an administrator of the Estate of Sir Ali Bin Salim El-Busaid he had never at anytime sold or executed a transfer over the said titles nor has the estate transferred its interest in the said title to anyone. he went on in his affidavit to explain how he learnt that there was an attempted sale and how he went to the land

office to find out the position.

He stated that he estate has not been paid the alleged Kshs. 200,000,000,00 purchase price or at all, and has had no dealings at all with the 1st defendants. He alleges the sale to the 1st defendant is unlawful, illegal and void. He expresses his fear that unless the 1st and 2nd defendant are restrained by a court order they may further their fraud and transfer the properties to unsuspecting 3rd parties and that will be detrimental to the applicants rights and that he will suffer irreparable loss. the applicant annexed the succession order, showing 61 beneficences, the three title deed he holds, the application for registration by the alleged fraudsters, the transfer of land showing a photograph of the vendor not the applicant and photographs of the two directors of the first applicant , the green cards and the three cancelled title deeds.

[2] The 1st defendant filed a replying affidavit through one Yakatali Amirali who says he is the 1st defendants Finance Manager. He alleged that his company acquired the suit properties for valuable consideration from Salim Soud Ali Bin Salim who he alleged is the administrator of the estate of Ali Bin Salim El-Busaidi. He annexed the agreement for sale, transfer and document and registered titles. the 1st respondent averred that the offer of purchase was Khs. 200 million shillings. further that at that point the said Salim Soud Ali Bin Salim (the administrator of the estate of Ali Bin Salim El-Busaid was in possession of the original succession order in Succession Cause no. 167 of 2009 from the Kadhis Court Mombasa. The 1st defendant annexed a copy f the Succession Order. The said administrator is alleged to have informed the directors of the 1st defendant that he lease to the said properties were to expire on 31st December 2012 and that therefore the directors authorised the transaction and purchase of the properties. The transaction was done through the 1st defendant advocates Menezes, Oloo and Chatur Advocates who drafted the agreement for sale and proceeded with the conveyance to its conclusion.

The 1st defendant avers that the administrator presented himself at Grain House, Beria Road, Shimanzi and excuted the transfer. The 1st defendant annexed bank statements confirming payment of the purchase price. The 1st defendant denied collusion with 2nd,3rd and 4th defendant to defraud the estate as averred. He states that all was above board and the paid stamp duty Kshs. 12 million.

[3] The applicant replied to the affidavit of the first defendant and averred that the person calling himself Salim Soud Bin Salim the so called administrator of the Estate of Ali Bin Salim El-Busaid (deceased) was actually Salim Abdalla Awadhi the man whose picture appears on the transfer to the replying affidavit. That the said Salim Abdalla Awadh was on 21st January 2013 charged at the Senior Resident Magistrate's Court Criminal case No. 190 of 2013 as Salim Abdallah Awadhi alias Salim Said Ali Bin Salim with nine (9) counts of forgery, making documents without lawful authority and obtaining registration of the suit parcels of land by false pretenses. The charge sheet was annexed. He averred that the documents annexed by Yakatali Amirali in this application are all exhibits in the above quoted criminal case and that the said Yakatali Amirali is not being candid with the court because it is the defendant company's legal officer one Joseph Sindani Mwela that directed the police and caused the arrest of the said Salim Abdalla Awadhi on 16th January 2013. He avers that the said Joseph Sindani Mwela is a witness in the aforesaid criminal case. He therefore avers that the 1st respondent is estopped from claiming that it has a valid legal title to the suit parcels of land. The further replying affidavit by Joseph Sindani Mwela (undated) never denied the allegations by the applicant Salim Soud Ali. He only said he reiterates the affidavit of Yakatali Amirali and that the 1st defendant followed the legal procedure before acquiring the suit property and denied any fraud as informed by his lawyer Mr. Oloo. The replying affidavit of Hashim Got Sat the Land Registrar Mombasa sets out how the property was registered in favour of the 1st defendant. However his averments in para 11 and 12 and 13 are instructive

Para 11

That when it was discovered there was some fraudulent dealing, I managed to contact one of the directors of M/s. Mjad Investments Ltd, and one M/s. Oloo advocates and informed them of the criminal aspects of the transaction. Through our efforts we managed to call one Salim bin Soud, whom through his son Twahir, took him to Grain Bulk Limited to meet the purchasers.

Para 12

That the rightful owner of the property Salim Bin Soud was identified by the office Secretary, Zaitun Bahu of M/s. Pandya & Talati Advocates Mombasa and I also instructed one of our registration officer to take pictures/photographs of the complainant for comparison purposes.

Para 13

That on 8th January, 2013, upon receiving a complaint letter both from the CID-Urban and complainant, I restricted the property with no dealing until further notice as confirmed by entry no. 6-8 on the Green Card. Annexed hereto a copy of the Green Card marked HGS-4.

[4] From the foregoing it is clear to the Court that there are serious issues to be canvassed as to how the three suit properties changed hands. The person alleging to have the letters of administration of the deceased now identified as Salim Abdalla Awadh and who sold the suit property to the first defendant is charged in court with nine counts of fraud and making fake documents in respect of the suit premises. The case is pending in Mombasa SRM;'s Court as criminal case no. 190 of 2013. The officers of the first defendant have been cited as witness against the said Mr. Salim Abdalla Awadh alias Salim Soud Ali bin Salim. The Land Registrar Mombasa admits that the real administrator was identified by office Secretary, Zaituni Bachu of M/s. Pandya and Talati Advocates Mombasa and photographs taken on his instructions. He (Land Registrar) has now put a restriction on the suit properties. There are also two issue that really disturb the court. One, that a purchase price of a staggering Kshs. 200,000,000.00 could be paid to an administrator of the estate of the deceased when the purchaser was aware, and was presented with an order of distribution for 61 beneficiaries showing their exact shares of the estate, the purchasers and their lawyers apparently appear to have kept a blind eye of the same. Two, equally perplexing is how the purchaser could pay such a staggering sum on properties whose leases were due to expire in a few months time and not insist on the vendor renewing the same first.

All these issues cannot be addressed at this stage. They will be well addressed I hope, at the hearing. The applicant herein meets the standards set out in *Geilla v Cassman Brown [1973] EA 358*. He has established a prima facie case with a probability of success. He has also shown that he is likely to suffer irreparable injury and the balance of convenience favours him.

[5] I grant a permanent injunction restraining the 1st defendant whether by himself, its servants or agents or anyone acting under it, or instructed by it or its lawful agent from disposing of, selling, alienating, transferring, charging, collecting rent, constructing wasting or in any other manner whatsoever and however dealing or interfering with the properties known as MOMBASA/BLOCK/XXI/498, MOMBASA/BLOCK/XXI/151, MOMBASA/BLOCK XXI/152 until final determination of this suit. The costs of this application shall be in the suit.

Dated and delivered in open court at Mombasa this 18th day of October, 2013.

S.N. MUKUNYA

JUDGE

18.10.2013

In the presence of:

Mbunya Advocate or the plaintiff'/applicant

Oloo Advocate for the 1st defendant

No representation for State - served