



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 31 OF 2015

PHILIP KIPKEMOI CHERUIYOT.....PLAINTIFF

VERSUS

GEORGE OLE DRINLING LERAYAN DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff alleging to have purchased land from defendant; title held in the name of a third person; allegation that title holder had sold his interest to defendant who in turn sold it to the plaintiff; no document to prove that title holder had sold his interest to defendant; no demonstration that defendant had good title to pass; no prima facie case established; application dismissed)

This suit was commenced by way of plaint filed on 5 February 2015. Together with the plaint, the plaintiff filed an application for injunction, which is the subject of this ruling. The case of the plaintiff as discernible from his pleadings is that on 11 July 2014, he purchased the land parcel Miti Mingi/Mbaruk Block 3/4117 (Barut) measuring 0.047 Ha, at a consideration of Kshs. 365,000/=, which is said to have been paid in full. It is averred that despite this, the defendant has refused to sign the transfer documents and has threatened to violently evict the plaintiff. It is stated that the title to the suit property is in the name of one Evans Orina, from whom the defendant had purchased the land, but a transfer has never been done. In the suit, the plaintiff has asked for a declaration that he is the owner of the suit property and for orders to have the defendant sign the transfer documents.

To his supporting affidavit, the plaintiff has annexed a copy of an agreement dated 11 July 2014 between himself and the defendant, and a copy of the title deed to the suit property.

The defendant entered appearance, but has so far not filed any defence, nor has he replied to the application. In as much as the defendant has not responded, this does not mean that the application must be allowed. This being an application for injunction, I need to be satisfied that the plaintiff has demonstrated a prima facie case with a probability of success, and that he stands to suffer irreparable loss if the injunction is not granted. If I will be in doubt, I will decide the application on a balance of convenience. These are the principles that were laid down in the case of ***Giella v Cassman Brown (1973) EA 358*** and which guide the court when dealing with an application of this nature.

The case of the plaintiff is that he purchased the suit property from the defendant. I have seen the agreement. The same states that the defendant is the beneficial owner of the suit property which is registered in the name of one Evans Orina Nyabinge.

It is apparent that the plaintiff purchased the suit property from a person who did not have title to it. It was stated by the plaintiff that the defendant had purchased the property from Evans Orina Nyabinge, but I have not seen any such transaction, and I am unable to assume, in absence of any form of documentation, that Evans Orina Nyabinge had sold his interest to the defendant. I have nothing before me to show that the defendant had good title to pass to the plaintiff. Without this demonstration, I am afraid that the plaintiff has not displayed to me a prima facie case with a probability of success. I am not in doubt and therefore need not consider the balance of convenience.

The upshot of the above is that I find no merit in this application and dismiss the same. I however make no orders as to costs as the defendant did not deem it fit to oppose the motion.

It is hereby ordered.

Dated, signed and delivered in open court at Nakuru this 17th June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Plaintiff/applicant acting in person.

N/A for M/s Mongeri & Co for defendant/respondent.

CA: Janet

MUNYAO SILA

JUDGE

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