



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
ENVIRONMENT AND LAND COURT
CIVIL SUIT NO. 222 OF 2013

DR. ANDREW ISOE MINGATE OCHOKI.....APPLICANT

VERSUS

THOMAS RATEMO OIRARESPONDENT

RULING

1. The Applicant, **Dr. Andrew Isoe Mingate Ochoki**, filed a Notice of Motion dated 2nd March, 2013 seeking the following orders:-
 - 1) spent
 - 2) spent
 - 3) **An injunction do issue restraining the Defendant whether by himself, his servants, agents, contractors and any other person other than the plaintiff from ploughing, cultivating, fencing, developing, entering, trespassing into the suit property Nakuru Miti Mingi/38 or interfering in any way with the plaintiff's (Applicant's) quiet possession and enjoyment of the said land parcel pending the full hearing and determination of this application;**
 - 4) **An injunction do issue restraining the Defendant (Respondent) whether by himself, his servants, agents, contractors and any other person other than the plaintiff from ploughing, cultivating, fencing, developing, entering, trespassing into the suit property Nakuru Miti Mingi/38 or interfering in any way with the plaintiff's (applicants) quiet possession and enjoyment of the said land parcel pending the full hearing and determination of the suit;**
 - 5) **That the costs of the application be provided for.**
2. The Applicant's application is grounded on the supporting affidavit sworn by the Applicant on 2nd March, 2013. The plaintiff in the supporting affidavit avers that he is the rightful legal and beneficial owner of Nakuru/Miti Mingi/ 38 (suit property).
3. The Applicant contended that he entered into an oral agreement with the Respondent for the sale of the suit property; That in exchange of payment of the full purchase price the Applicant released to the Respondent the title documents relating to the suit property; However, upon the Applicant

presenting the cheques to the bank, they were dishonored and the Respondent filed to re-issue the cheques and or pay the consideration for the suit land. The Applicant states that the Respondent has since transferred the land in his favour and forcibly entered the land to plough for the coming planting season. He urges the court that he will suffer irreparable damages if the Respondent is not restrained from taking possession of the suit land.

4. The Respondent oppose the Applicant's application and has filed a Replying affidavit dated 22nd March 2013. He denied having fraudulently procured the registration of the suit land in his favour and avers that the Applicant duly signed the application form for consent to transfer the suit land; That the Applicant further executed the transfer form and the required registration procedure adhered to; The Respondent admits that the two cheques issued to the Applicant did not go through for the reason they required confirmation, he however avers that he has made subsequent attempts to pay the Applicant the purchase price less an advance payment and costs incurred in the registration process; That the Applicant has failed to provide to the Respondent the payment account thus frustrating completion of the transaction.
5. Written submission were filed by the Applicant and Respondent, all of which I have read and taken into consideration.
6. In determining whether or not to give the applicant the orders he seeks of an interlocutory injunction, I will refer to and rely on the principles laid down in the celebrated case of **Giella vs. Cassman Brown (1973) EA 358** as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is on doubt, it will decide an application on the balance of convenience”.

7. So has the Applicant shown a prima facie case with a probability of success? A *prima facie* case as described in the decision of **Mrao vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125**

“... includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

8. There is no doubt in my mind that the Applicant does have a genuine and arguable case for the following reasons. Firstly, it is not in contention that the Applicant was the beneficial owner of the suit land. It is also agreeable that the parties consented to the sale and purchase of the suit land for a consideration. The only point of departure is whether the agreed consideration was paid by the Respondent to the Applicant and or whether registration was fraudulently obtained. No evidence by the Respondent seems to suggest payment of the purchase price. Contrary, the Applicant has annexed two copies of the cheques issued by the Respondent to the Applicant in respect to the Purchase price which were not honoured by the bank for whatever reasons. It therefore follows that no sufficient consideration was paid. This is admitted by the Respondent by stating that he has on several occasions attempted to pay the purchase price without success.
9. As to whether the Applicant will incur irreparable damages? I find that the harm caused may not be adequately compensated by way of damages in matters touching on land as the applicant will miss several planting seasons and the loss he is likely to suffer cannot be ascertained.
10. As such I do allow prayer 4 of the Notice of Motion dated 2nd March, 2013.

Costs of this application be in the cause.

Dated, signed and delivered on this 24th day of January 2014.

L N WAITHAKA

JUDGE.

PRESENT

Mr Oira for the Defendant/Respondent

Mr Ndubi for the plaintiff /Applicant

Emmanuel Maelo: Court Assistant

L N WAITHAKA

JUDGE