

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 172 OF 2011

HAUSER PATRICK GEORGE PLAINTIFF

- VERSUS-

ISAAC NJUGUNA NJOROGE DEFENDANT

RULING

[1] The applicant filed a notice of motion dated 23rd June 2011. His main prayer is that the respondent be restrained by himself, his agents, employees or anybody acting under him from selling, transferring, charging or developing or in any manner dealing with all these properties set out in the said motion. He supported his application with his affidavit sworn on 23rd June, 2011 whose averments are self explanatory.

[2] The respondent filed a replying affidavit sworn on 15th July, 2011 basically denying the averments contained in the notice of motion aforesaid but admitting having received Kshs. 600,000 and claiming that he bought two portions of an acre for the applicant. His averment in the said affidavit are also self explanatory. The respondents attempted to attack the suit on the ground that it was a non starter and that it is caught up by limitation of Actions Act and further that the claim can only lie for accounts and a refund of money unaccounted for and unutilized and not for restraining orders or injunction or declaration. Those objections were dismissed by Kasango J in her ruling of 25th May, 2012. I have also read the plaintiffs written submissions and the annexures therein. I have equally read and considered the defendant/respondent written submissions.

[3] I am convinced that for the real issues in the plaint to be determined this suit must proceed to full hearing and the averments of the parties herein as set in their various lengthy affidavits be tested on cross-examination. This calls for the suit properties herein to be protected pending the hearing on such issues of fraud and misappropriation of funds as have been alleged. The balance of convenience is in favour of granting an injunction as prayed to protect the suit properties. The applicant shall give an undertaking as to damages to the extent of the figure he says the properties cost Ksh. 65,000 francs then exchanging at Kshs. 24 bringing a total of Kshs. 1.4 million the net result is that;

1. The motion dated 23rd July, 2011 is allowed in terms of prayer no. 3.
2. The applicant shall give an undertaking as to damages to the extent of Kshs. 1.4. million.
3. The costs of this application shall follow the event at the determination of this suit.

Dated and delivered in open court at Mombasa this 24th day of March, 2014.

S. MUKUNYA

JUDGE

24.3.2014

In the presence of:

Mr. Wameyo Advocate for the applicant

Mr. Akanga Advocate for the respondent