



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO.106 OF 2012

DAVID KINYUA BEDFORD.....PLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYA.....DEFENDANT

RULING

This application is dated 4.6.2012 and seeks orders:

1. **That court do certify matter urgent and dispense with service.**
2. **That court do issue an order of injunction to restrain the respondent or its agents, servants or anybody claiming through them from selling, alienating, or whatsoever interfering with MUTHAMBI/IGUAMURATHI/849 & 850 pending interpartes hearing or until further orders of this court.**
3. **That during interpartes hearing court do issue an order of injunction restraining the Respondent, its agents, servants or anybody claiming through them from selling, alienating, or whatsoever interfering with MUTHAMBI/IGUAMURATHI/849 & 850.**
4. **That costs be provided for.**

The following grounds were proffered by the applicant/plaintiff:

- (a) **The sale of the subject matter is on 6.06.2012 and the Respondent has not issued statutory notice.**
- (b) **The Applicant's school with 120 students and 10 staff members may be sold unlawfully and the pupils and the Applicants will suffer irreparably.**
- (c) **The Applicant has paid Kshs.1.2 million out of Kshs.1.5 million balance (sic) and payable in 5 years period.**
- (d) **The account has to be taken (sic).**

On 22.3.2013, the parties by consent, with the approval of the court, elected to argue the application by way of written submissions. On 1.10.2013 the plaintiff was directed to file and serve written submissions within 30 days. The respondent was to do so within 30 days after service by the applicant. The plaintiff filed his submissions on 28.11.2013. When the matter was mentioned to confirm filing of submissions on 20.2.2014, it became clear that the respondent had not filed the required submissions. This was 3

months after directions had been given. The applicant moved the court to deliver a ruling.

In his submissions the applicant submits that he has satisfied the principles set out in **GIELLA VS CASSMAN BROWN AND ANOTHER (1973) EA 358** for grant of an injunction. He submitted that should the orders be vacated, the defendant will sell his land, rendering the suit nugatory. The damage that would ensue, he further submitted cannot be compensated by way of monetary form in that the children learning in his school would not have education facilities.

The respondent did not file submissions. That notwithstanding, I find that the applicant's application has merit. In the circumstances, I allow the application. Costs shall be in the cause.

It is so ordered.

Delivered in open court at Meru this 19th day of March, 2014 in the presence of:

Cc Mwonjaru

Mutungu h/b C. Kariuki for Plaintiff

Mwirigi h/b D. J. Mbaya for Defendant

P. M. NJOROGE

JUDGE