



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND CASE NO. 29 OF 2013

LEONARD MUGAMBI.....PLAINTIFF

VERSUS

ERUSTUS KENETH MUNGANIA.....DEFENDANT

RULING

The Application herein is dated 1st February, 2013 and is premised on the provisions of the law indicated on its face. It seeks orders:

1. **That in the first instance, Court do certify the matter urgent and service be dispensed with.**
2. **That Court do issue an order of temporary injunction to stop the defendant/respondent from alienating, selling, or whatsoever interfering with land parcel NKUENE/TAITA 1941 pending hearing and determination of this application.**
3. **That inhibitory order be issued against land parcel L.R.: NKUENE/TAITA/1941 pending the hearing and determination of this application.**
4. **That inhibitory order be issued against land parcel No. Land LR: NKUENE/TAITA 1941 until further orders of the Court or until suit herein is heard and determined.**
5. **That costs be in the cause.**

The application was supported by the supporting affidavit of the applicant. It does not disclose the fact that the applicant had not paid part of the Purchase price amounting to Kshs.300,000/=. Even the applicant's supplementary affidavit does not disclose this fact.

The respondent relied on his replying affidavit and gave a chronology of the events leading to the institution of this case. The respondent complained that although the agreement with the plaintiff was for purchase of one portion, eight portions had been inhibited.

Having considered the submissions of the parties and having looked at the pleadings, I find that the parties had entered into an agreement dated 2nd August, 2012 for sale of a portion of land measuring 40ft by 100ft to be excised from the main title of land LR Nkuena/Taita/1941 for the price of Kshs.600,000/=. Shs.300,000/= was paid and the balance of Kshs.300,000 was to be paid on 30.9.2012. It was not paid. The parcel of land Measuring 40ft by 80ft was to be transferred to the plaintiff by

30.9.2012.

There is no question that the parties had an agreement. The land could not be transferred by the date of the agreement. Both parties did not meet their parts of the bargain and they have accepted that.

I do not wish to delve into issues that can only be determined after the main suit has been heard. As the defendant has intimated that he is willing to deposit a sum of Kshs.300,000 in court in 15 days, this changes the situation greatly.

I find that the plaintiff has not satisfied conditions necessary for the grant of an injunction. I also find that there are good grounds for not granting the order of Inhibition as prayed for by the plaintiff.

I give orders in the following terms:

1. **The defendant to deposit the sum of Kshs.300,000 in court as security within 15 days.**
2. **Prayers 2, 3, and 4 in the application dated 1st February, 2013 are dismissed. Any Inhibition against Parcel No Nkuene/Taita/1941 and any resultant parcels thereof and specifically parcels Nos. 2897 , 2898, 2899, 2900, 2901, 2902, 2903 and 2904 be lifted forthwith after the plaintiff has deposited the sum of Kshs.300,000 into Court as security as ordered and proof thereof be also furnished to the land Registrar.**
3. **Costs to be in the cause.**
4. **Mention on 5.9.2013.**

Delivered in Open Court at Meru this 27th day of June, 2013 in the presence of:

Cc Mwonjaru/Daniel

Nyenyire for Applicant/Plaintiff

Majau for respondent/defendant

P. M. NJOROGE

JUDGE