



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
CIVIL CASE NO. 178 OF 2011

PETER GACHIHI MURIGI.....PLAINTIFF/APPLICANT

=VERSUS=

1. SAID ATHMAN MZEE

2. DISTRICT LAND REGISTRAR...DEFENDANTS/RESPONDENTS

R U L I N G

1. The Application before me is the one dated 23rd November 2011. The Application is seeking for temporary injunctive orders restraining the Defendants or their employees, agents, or servants from alienating or disposing or dealing in any manner with the suit property known as LAMU/LAKE KENYATTA/11/538 pending the hearing and determination of the suit.
2. The Application is supported by the Affidavit of the Plaintiff/Applicant.
3. According to the Plaintiff/Applicant he purchased parcel of land known as Lamu/Lake Kenyatta/11/538 measuring approximately 7.5 Ha from the 1st Respondent. The 1st Defendant/Respondent was to process the discharge of charge from the Settlement Fund Trustee.
4. The Applicant has deponed that the 1st Respondent put him in possession of all the documents because he was to assist the 1st Respondent to settle the money he owed the Settlement Fund Trustee; that the 1st Respondent obtained a discharge of charge and a title deed was issued to him on 27th June 2011 by the 2nd Respondent.
5. Since then, the 1st Respondent has not obtained the Lamu Land Control Board consent to transfer the land to the Applicant despite swearing an affidavit in which he agreed to transfer the property to him.
6. The Plaintiff is apprehensive that the caution he registered against the suit property might be lifted thus allowing the Respondents to alienate it thus the Application for orders of injunction.
7. The 1st Respondent filed his Replying Affidavit on 3rd December 2012 and deponed that he is the registered owner of the suit property and in actual possession.
8. The 1st Respondent admitted that he entered into an agreement with the Plaintiff/Applicant on 14th August 2009 in which he was to sale the suit property to the Plaintiff/Applicant for Kshs.350,000/-.
9. According to the 1st Respondent, the Applicant only paid Kshs.200,000 leaving a balance of Kshs.150,000; that the Applicant lodged a caution on the suit property even before he could complete to pay the balance of the purchase price and that the Applicant refused to accept the offer

- he had given him of refunding the deposit he had paid.
10. The Applicant filed a further affidavit on 28th March, 2013 and stated that the balance of the purchase price of Kshs.100,000 was to be paid to the 1st Respondent upon obtaining the Land Control Board Consent, which consent has not been obtained to date.
 11. The parties agreed to dispose of the Application by way of written submissions which I have considered.
 12. For the Applicant to be granted the orders of injunction by this court, he must satisfy the court that he has a prima facie case with chances of success and further that if the injunctive order is not granted, he is likely to suffer irreparable damage that cannot be compensated by way of damages.
 13. In his Complaint, the Plaintiff is seeking for orders of specific performance in respect to the Agreement of sale dated 14th August 2009.
 14. The Plaintiff/Applicant has deponed that the Respondent had not obtained the consent of the Land Control Board to transfer the suit property to him though he signed the Land Control Board forms.
 15. Section 6 (1) of the Land Control Board Act, CAP 302 provides that the sale or transfer of agricultural land is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent. The consent must be obtained within six months of the making of the agreement for the controlled transactions by any party thereto.
 16. In the cases of **Peris Gichuki and another Vs. The Official Receiver and another, Nairobi Civil Appeal No. 135 of 1996; Gabriel Makokha Wamukola VS Sylvester Nyongesa Danati, Civil Appeal No. 6 of 1996** and **Githini & Another Vs Munene Irangi, Nyeri Civil Appeal Number 131 of 1987**, the Court of Appeal set aside the sale of land because the consent of the relevant land control board was never obtained.
 17. In view of the mandatory provisions of section 6 (1) of the Land Control Act, Cap 302 and the numerous Court of Appeal decisions, I find that in the absence of the Land Control Board consent, the Sale Agreement dated 14th August 2009 cannot, prima facie, form a basis for the order of specific performance.
 18. I therefore find and hold that the Plaintiff/Applicant has not established a prima facie case with chances of success.
 19. The Applicant's recourse is to pursue the money that he paid to the 1st Respondent.
 20. For the reasons I have given above, I dismiss the Plaintiff's/Applicant's Application dated 23rd November 2011 with costs.

Dated and Delivered in Malindi this 18th day of July, 2013.

O. A. Angote

Judge