



REPUBLIC OF KENYA

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IN THE HIGH COURT OF KENYA

AT ELDORET

HCC NO. 138 OF 2011

ERICK CHEPKWONY AENGWO.....PLAINTIFF

VERSUS

JONATHAN RUTTO KIBIESANG.....DEFENDANT

RULING

The application before this court is for an interlocutory injunction under Order 40 Rule (1) of the Civil Procedure Code and also under Sections 3A and 63 of the Civil Procedure Act.

A brief summary of this case is that the Applicant and the Respondent entered into a Sale Agreement on the 4th August, 1978 for the sale of the land in dispute that is BARINGO/TIRIONDONIN/44. The Applicant paid the full purchase price of Kshs 1000/=.

The Applicant now claims to be in adverse possession of the land since that date and has filed an Originating Summons in support of his claim. It is the Applicants contention that the Respondents now wants to evict the Applicant from the disputed land and that is the reason the Applicant seeks injunctive orders.

The Respondent avers that he became the registered proprietor of the land in dispute on the 22nd November 1994 and a copy of the Green Card is annexed to the Originating Summons.

At the hearing of the application, Counsel for the Applicant chose to rely on written submissions where as Counsel for the Respondent made oral submissions.

I have read the Applicants written submissions and heard oral submissions made by the Respondents Counsel.

I find that there are three (3) issues for determination:

- (i) The agreement for sale
- (ii) Adverse possession
- (iii) And whether a prima facie case has been made to merit injunctive orders.

I find that the cause of action arises from a claim for adverse possession. I am satisfied that this

establishes a prima facie case. When dealing with matters pertaining to land, I find that an award for damages is never an adequate remedy and if the Applicant is evicted he will certainly suffer substantial loss. Nevertheless, this court is averse to granting injunctive orders to persons who are not seized of Title.

The full context of the legality of the contract, the Sale Agreement and whether consents were obtained can be canvassed at full trial at a later date.

The ruling of the court is that there be a Status Quo to be maintained pending the hearing and final determination of the Originating Summons. Each party to bear their own costs.

Dated and Delivered at Eldoret this 24th day of January 2012.

A.MSHILA
JUDGE