



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 23 OF 2010

**INTERNATIONAL PENTECOSTAL HOLINESS
CHURCH.....PLAINTIFF**

VERSUS

**STAR- LAND COMPANY
LTD.....DEFENDANT**

RULING

The application before this court is a Chamber Summons dated the 25th May, 2010 and the same was filed in court on the 4th June, 2010. The Applicants brought the application under the provisions of Order 39 Rules 1, 2, 3 and 9 of the Old Civil Procedure Rules together with all enabling provisions of the law.

The Applicants were granted temporary injunctive orders on the 4th April, 2011 against the Respondents pending inter parties hearing. A brief summary of the main matter is as follows:

The 1st Applicant, namely International Pentecostal Holiness Church entered into a sale agreement with the 1st Defendant/Respondent namely, STAR LAND COMPANY LTD. The sale agreement was dated the 30th January 2004 and the Applicants agreed to purchase plot NO. 77 (also known as Uasin Gishu L.R 8086/2005) being a portion of LR 23201/30 and measuring approximately two (2) acres.

Pursuant to the said agreement the Applicants paid to the Respondent the sum of Kshs 400,000/= being the full purchase price and were issued with a Certificate of Completion.

The Applicant through the supplementary affidavit of Reverend David Kwatuha deponed that the Respondents have on a number of occasions attempted to subdivide and sell the land to other parties in total disregard to the agreement for sale. He further avers that the Respondents have been unable to grant the Applicants with Title to the said property.

The Respondents opted to put in written submissions and submitted that for the Applicants to be granted injunctive orders the Applicants must first establish that they have a prima facie case with a probability of success, that the balance of convenience must tilt in the Applicants favour and that they must show that an award for damages would not be an adequate remedy. The Respondents cited the authority of GIELLA VS CASSMAN BROWN AND CO. LTD (1973) EA at page 358 which lays down the above principles favouring injunctive orders.

The Respondents urged the court to dismiss the Applicants application for injunctive orders as the

Applicants had failed to demonstrate that they had a prima facie case. The main argument of the Respondents is that the sale agreement was null and void and unenforceable due to the fact that six (6) months had lapsed without consent of the Land Board being obtained. The agreement was dated the 30th January 2004 and consent should have been sought and obtained on or before the 30th July 2004. Therefore the agreement as null and void as it vitiated the provisions of the Land Control Act (Cap 302) Laws of Kenya.

The Respondents submit that the Appellants can be adequately compensated by a refund of the sums paid and an award for damages.

The Respondents prayer was that the application herein be dismissed with costs to the Respondents.

I have read the Application, Replying Affidavit, Supplementary Affidavit and Written Submissions of both the Applicants and Respondents.

The only issue for determination is whether the Applicants have made out a prima facie case to warrant issuance of the injunctive orders.

The issues of consent and validity of the contract can be dealt with at the hearing of the main suit.

I find that the Respondents herein caused the property known as Land Reference Number 23202/30 situate in Uasin Gishu District to be subdivided. The Respondents did not proceed to extract titles for the sub-divisions. They instead issued certificates of completion to the applicants.

This court has judicial notice of the practice of companies that deal in land, whereby certificates are issued to purchasers in lieu of Title Documents and the Certificates are kept as a record of ownership.

I find that the Applicants have made out a prima facie case in that the purchase price had been fully paid up and a Certificate of Completion issued in support of ownership. The Appellants had fulfilled all the obligations on their part and it was now upon the Respondents to fulfill theirs.

I also find that an award for damages is not always an adequate remedy when dealing with matters pertaining to land due to the suitability of location and the ever escalating price of land.

The application is hereby allowed and the Respondent, their agents or servants are hereby restrained by way of injunction from entering, trespassing selling or disposing off, cultivating, constructing or in any other way dealing with land known as Plot NO. 77 also known as Uasin Gishu L.R. NO. 23201/30 pending the hearing and final determination of the suit. Costs shall be paid to the Applicants.

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

A.MSHILA

JUDGE