



REPUBLIC OF KENYA



Omayio v Gusii Farmer Coffee Co-operative Union Ltd & another (Environment & Land Case 1 of 2021) [2022] KEELC 2258 (KLR) (10 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2258 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 1 OF 2021**

JM KAMAU, J

MAY 10, 2022

BETWEEN

PETER ONDARI OMAYIO APPLICANT

AND

GUSII FARMER COFFEE CO-OPERATIVE UNION LTD 1ST RESPONDENT

ROBERT G.N. MAINYA 2ND RESPONDENT

RULING

1. The Plaintiff has moved this court by way of a Notice of Motion dated 31/03/2022 for an order of injunction restraining the Defendants from carrying any further sub-division, sale or transfer or alienation of the property currently registered as GESIMA BLOCK 1 (SIMBAUTI)/167 (formerly) part of the property known as L.R. NO. 7487/2 pending the hearing and determination of this suit. The grounds upon which the Application is brought is that the Plaintiff tendered to purchase 10 Acres out of L.R. No. 7487/2 following the general invitation placed in the print media by the 1st Defendant on 16th October, 1997 to which the Plaintiff responded positively and had his tender. He depones that he issued a cheque of Kshs. 375,000/= and security of Kshs. 500,000/= was given by the Kenya Commercial Bank Ltd. He also deponed to have made further payments on 23/9/2013, an additional Kshs. 900,000/= to the 1st Defendant's Account Number 01120016622902 and that the total payment made so far is Kshs. 4,700,00/= besides Kshs. 72,000/= and Kshs. 150,000/= in respect of survey fee and registration of Title Deed respectively. To date the Defendants have failed to transfer the property to the Plaintiff as a consequence of which he seeks the preservation of the suit property. The Plaintiff has buttressed his Application with documents to show payment and communication between the parties.
2. On his part, Mr. Robert G.N. Mainya, the 2nd Defendant and also the C.E.O. of the 1st Defendant swore a Replying Affidavit on 21/4/2022 where he deponed that there was no sale of land agreement executed and that no payment of the purchase price was ever made by the Plaintiff. He further says



that the Plaintiff failed to pay the balance of 75% within 30 days and that the 25% was not paid because it was not receipted for it was not paid within the required 15 days after the bid. He also argues that the balance of Kshs. 2,625,000/= should have been paid to the 1st Defendant's Advocates and not directly to the 1st Defendant. He accuses the Plaintiff of indolence and state that the Plaintiff would not suffer any prejudice should the orders sought here are not granted and that whatever loss he would suffer would be remedied by way of mandatory compensation.

3. I invited both parties to make oral submissions. Counsel for the Plaintiff sought to rely on their documents already submitted in court and the Affidavit supporting the Application. Mr. Riechi for the Defendants made oral Submissions in addition to his written Submissions. I have gone through Counsel's Submissions, the Application and the response thereof. I do not intend to go so deep in the merits or otherwise of the case because this will pre-empt the outcome of the case which may invariable be heard by myself. Therefore, I will not dwell so much on ground No. 1 of the Principles laid down in the case of *Giella v Cassman Brown* (1973) E.A. 358. But coming to ground number 2 i.e. whether the Applicant has demonstrated that he stands to suffer irreparable loss incapable of being remedied by damages and/or compensation, I am of the view that the Plaintiff contracted to buy 10 Acres out of L.R. No. 7487/2 of Kshs. 3,500,000/= in 1997.
4. I do take Judicial Notice of the fact that the value of land countywide has gone up more than 10 times since then. This is not to say that this court does not have the powers to award the sum of money equivalent to the current market price as adequate compensation or in terms of Damages should the Plaintiff prove that he is deserving of the same. But of much significance is that land has become scarce since the year this contract was entered into. It may prove difficult to get land that is nearby as productive and/or strategic in the neighbourhood of the suit property even if the place and nearer locality of the suit property may also not be a walk in the park particularly in the Gusiiland. This in my considered view would lead me to conclude that should the prayers sought for be denied, then the Plaintiff/Applicant, if successful in the suit, would stand to suffer irreparable loss incapable of being redressed by way of Damages or compensation. By the time one settles to buy land at a particular place, there are many factors he puts into consideration. These include proximity to where he lives (if at all) or his ancestral home, proximity to social amenities and the infrastructure in the neighbourhood just to mention a few. These are factors the Plaintiff may have put into consideration when contracting to but the suit property.
5. And since justice is a two-edged sword which cuts on both sides we need to ask ourselves whether this Application, if granted, would prejudice the Defendants/Respondents. The answer is in the negative. The court is not ordering that the Plaintiff takes possession and/or occupation of the suit land if he has not done so. Nor is he in a position to dispose it. The court is being urged to granting the preservatory orders in order to ensure that the subject matter of the suit survives the outcome of the case and the property, if preserved will always be there for the person who eventually carries the day.
6. Having said as much, I hereby make the following orders: -
 1. The Defendants/Respondents jointly and severally, their agents, servants and/or employees or any other person deriving Title from the said Defendants are hereby restrained by way of a temporary injunction from carrying any further sub-division, sale or effecting any transfer or alienating the property currently registered as GESIMA BLOCK (SIMBAUTI)/167 (formerly L.R. NO. 7487/2 or any part thereof until the determination of this suit.
 2. The parties herein are given 15 days from the date hereof to comply with the provisions of Order 11 of the *Civil Procedure Rules*.



3. This suit shall be set down for hearing and be heard within the next 45 days from the date hereof.
4. The costs of the Application dated 31/03/2022 shall abide the outcome of this suit.

Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 10TH DAY OF MAY, 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff: Mr. Nyamwange holding brief for Mr. Nyambega

Defendants: Mr. Riechi

