



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CIVIL SUIT 172 OF 2011
DEVSHI KARSAN VARSANIAPPLICANT
VERSUS
1. ELISHA BUSIENEI
2. TITO KIBIWO TT YAGAN
3. OBADIAH SAINA
4. JONAH MAIYO
5. HOSEA RUTO.....RESPONDENTS

RULING:

The application is brought under Order 40 Rules 1, 2 and 9 of the Civil Procedure Rules read with sections 1A, 3 and 3 (A) and Section 63 (e) of the Civil Procedure Act and all other enabling provisions of the law.

The Applicant seeks an injunctive orders to restrain the Respondents, their agents, servants and assigns from dealing and/or interfering with the Applicant's quiet possession, use and/or enjoyment of the land parcel namely ELDORET MUNICIPALITY/BLOCK 8/51 pending the hearing and determination of the suit.

The Applicant relies on the grounds set out in the application dated 10th October, 2011 and the Supporting Affidavit and Supplementary Affidavit made by Devshi Karsan Varsani dated the 10th October 2011 and 9th December, 2011, respectively

The parties opted to argue the application by way of Written Submissions.

The Applicant states that he purchased the suit property from Selina Chepkoech for the sum of Kshs Forty million (Kshs 40,000,000/=) as the purchase price and that he paid Kshs 10,000,000/= as deposit and took possession of the same and started developing the property.

The Applicant depones that he is the registered proprietor and has annexed a copy of the Sale Agreement, marked annexure “DKV1”, a copy of the Certificate of Title marked as annexure “DKV 3” and copy of the Official Search marked as annexure”DKV4”.

The Applicant states that the Respondents are claiming ownership or interest in the said suit land and are challenging the issuance of the Title documents by the Registrar of Lands.

The Applicant further states that the Respondents have no proprietary interest to the said parcel of land and prays for injunctive orders as he has made out a prima facie case with high chances of succeeding in his suit.

The Applicant relied on the case of **GIELLA –VS- CASSMAN BROWN** and states, that he has satisfied the conditions set down therein and prayed that the injunctive orders do issue.

The Counsel for the Respondent, Mr. Buluma, opposed the application and the granting of the injunctive orders.

The Respondents relied on the Replying Affidavit of the 2nd Respondent made on the 1st November, 211 and the Replying Affidavit of the Land Registrar.

The Respondents submit that the suit land is non-existent as the same has been sub-divided and new Titles have been issued and further submit that the Title was a forgery.

The Respondents pray that the application be dismissed as the Applicant has not shown how the Respondents were interfering with the suit land.

I have read the Written Submissions and heard the Oral Submissions of both Counsel for the Applicant and the Respondents.

The Applicant annexed a copy of the Title to the application in support of his proprietary right to the suit land.

From the pleadings it is apparent that there is sub-division ongoing and an ongoing exercise of issuance of new titles which amounts to interference with the suit property and the Applicant has a right to stop this exercise by way of injunctive orders.

In these circumstances the court is satisfied that the Applicant has made out a prima facie case by showing that the subject matter, the suit land needs to be protected so as to remain intact.

All the other issues pertaining to forgery, non-existent land and non-existent Title can be canvassed at the hearing of the main suit.

An injunctive order is an equitable and discretionary relief, and is given in instances when the subject matter needs protection.

The Applicant has satisfied the court that the subject matter needs protection. The Application has merit and an injunctive order is hereby issued as set out hereunder;

It is hereby ordered:

1. THAT the Respondents, jointly and severally, their servants and or agents are hereby restrained from in any way dealing and/or interfering with the Applicants quiet possession, use and/or enjoyment and/or doing any act that is inconsistent with the Applicants right as the legal lessee of the land parcel No. Eldoret/Municipality Block 8/51 pending the haring and final determination of the main suit.
2. THAT the Applicant shall furnish an undertaking as security for costs and damages. The same shall

be furnished and filed in court within the next five (5) days from the date hereof.

3. THAT the Applicant shall have costs of the Application.

Dated and delivered at Eldoret this 22nd day of June 2012.

A. MSHILA

JUDGE

Coram: Hon. A Mshila J

CC: Andrew

Counsel for the Plaintiff.....

Counsel for the Defendants.....

A.MSHILA

JUDGE