



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.362 OF 2010

ALMIRA AL KARIM BADRUDIN SUNDERJI.....PLAINTIFF

VERSUS

FIROZ HIRANI.....DEFENDANT

R U L I N G

1. Almira Al Karim Badrudin Sunderji who is a minor suing through his next friend came to this court under a certificate of urgency and obtained an interim order of injunction restraining the defendant, his agents or servants from alienating, selling, transferring, collecting rent or otherwise howsoever from interfering with the plaintiff over Flat No. 34 erected on LR No. 209/3462 Nairobi Ismailia Highridge Housing Co-operative Society Ltd pending the inter parte hearing of an application which he had filed against the respondent Firoz Hirani.
2. The application dated 26th July, 2010 came up for hearing on three occasions but could not proceed as the respondent needed time to respond to the application. At some stage the respondent's counsel was unwell. On 21st October 2010 the parties advocates agreed to exchange and file written submissions to enable the court determine the application. It was agreed that the counsel would attend court on 24th November 2010 for highlighting of the submissions.
3. On 24th November 2010, counsel for the applicant did not attend court. He had also not filed any written submissions and therefore no responding submissions could be filed. Under these circumstances I marked the chamber summons dated 26th July, 2010 stood over generally and discharged the interim orders.
4. Two days later on 26th November 2010 the applicant came back to this court seeking to set aside the order of 24th November 2010 and to have the interim order of injunction reinstated. Mr. Michael Owuor who is the counsel for the applicant has sworn an affidavit explaining that he arrived late in court because he woke up late after having arrived at his house at 4.00 a.m. after coming from Kitale where he had gone to file a petition. Counsel has pleaded that the suit involves an infant who would be greatly prejudiced if the interim order is discharged.
5. The application is strenuously opposed by Mr. Khan who appeared for the respondent. He

contends inter alia that there is nothing to substantiate Mr. Owuor's allegations that he had gone to Kitale nor is there a good reason as to why Mr. Owuor did not seek Mr. Khan's indulgence. Mr. Khan further points out that no submissions were served upon him.

6. I have carefully considered the application. It is evident that the applicant's counsel erred in failing to file his submissions as agreed and also in failing to communicate with counsel on the other side to explain his predicament. Be that as it may, the applicant has not committed any mistake that would justify the court making orders prejudicial to him. It is evident that the mistake was that of the applicant's counsel and for which it would not be fair to condemn the applicant. I note that although the applicant came to this court under a certificate of urgency, that urgency appears to have died presumably because the applicant is comfortable with the interim orders. I will therefore allow the application but reinstate the interim orders on the condition that the orders shall lapse within 90 days from today unless otherwise extended by the court. Parties are further hereby directed to comply with the pre-trial procedures as provided in Civil Procedure Rules 2010 so as to facilitate the speedy disposal of this matter

7. These shall be the orders of the court.

Dated and delivered this 11th day of February, 2011

H. M. OKWENGU
JUDGE

In the presence of: -
Advocate for the plaintiff absent
Githaara for the defendant
B. Kosgei - Court clerk