



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO.501 OF 2010**

**SUKHDEV SINGH LALY.....PLAINTIFF**

**VERSUS**

**GERALD RICHARD KAFEERO.....1<sup>ST</sup> DEFENDANT**  
**MARY KAVOSA KAFEERO.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Sukhdev Singh Laly hereinafter referred to as the applicant has come to this court by way of chamber summons dated 19<sup>th</sup> October, 2010. He is seeking *inter alia* orders that the *status quo* be maintained and that Gerald Richard Kafeero and Mary Kavosa Kafeero who are the respondents, their servants or agents be restrained from interfering with the peaceful occupation and enjoyment of the applicants and their tenants, or selling, transferring, leasing, charging or threatening the applicants tenants with eviction or having any dealings of adverse nature in regard to land parcel No. LR. 7741/377 situated at Forward Close Kitisuru Nairobi (hereinafter referred to as the suit property).
2. The application is anchored on grounds stated on the application as well as an affidavit sworn by the applicant. In short the applicant who was the registered owner of the suit property entered into to a sale agreement with the respondents on 20<sup>th</sup> March 2003 for sale of the suit property. The completion date was 120 days from the date of execution of the agreement. The agreed purchase price was 23 million, however the respondents only paid 16,100,000/- and has to date not paid the balance.
3. According to the agreement the applicant was to continue receiving rent from the suit premises until the purchase price is paid in full. Contrary to the terms of the agreement, the respondents are now threatening the tenants with eviction unless they pay rent to them. Apparently, the applicant transferred the suit property into the respondent's name and therefore fears that he is likely to lose the mesne profits and the suit property without the respondent paying the balance of the purchase price.
4. The respondents object to the application. A replying affidavit has been sworn by the 1<sup>st</sup> respondent. The respondents admit that an agreement was entered into between the applicant and the respondent for the sale of the suit property as alleged. The respondents maintained that they are now the legal owners of the suit property. The respondents concede that they only paid the applicant KShs.16,100,000 out of the agreed consideration of KShs.23 million, but maintain that the applicant received the balance through collection of rents from the suit premises as agreed upon by the parties. The

respondents maintain that the applicant has collected rent of over 10 million from the suit property and this is in excess of the balance which was due to him. The respondent maintain that the applicant has not served them with any notice to rescind the contract. The court is urged not to issue the orders sought as the applicant has not demonstrated any harm that is likely to be occasioned to him.

5. I have carefully considered the application, the affidavits in support and, in reply as well as the annexures thereto. I have also considered the submissions made before me by counsel. It is not disputed that the purchase price for the suit property was Kshs.23 million out of which the respondent paid the applicant directly Kshs.16,100,000/=. The dispute is over the balance of Kshs.6,900,000/= which the applicant claims is still due but which the respondent maintain the applicant has recovered through rent. It is evident that the suit property has already been transferred to the respondents. Although the applicant maintains he has not been paid the full purchase price, he has not explained why or how the suit property was transferred to the respondents before the full consideration was paid.

6. I find that the applicant has not established any prima facie case regarding the nullification of the agreement of sale of the suit property or revocation of the title held by the respondent. In any case the applicant's loss if any is clearly ascertainable. It is the unpaid balance of the purchase price and the rent due from the suit property. It cannot therefore be said that the applicant is likely to suffer irreparable loss if the orders sought are not granted.

7. Finally the orders sought by the applicant in particular prayer 5 of his application are orders of a mandatory nature. The applicant has not demonstrated a clear and straightforward case or any hardship or urgency such as would justify the granting of an order of mandatory injunction.

8. For the above reasons I find no merit in the chamber summons dated 19<sup>th</sup> October 2010 and do hereby dismiss the application with costs.

**Dated and delivered this 11<sup>th</sup> day of February, 2011**

**H. M. OKWENGU**  
**JUDGE**

In the presence of: -  
Mrs. Odhiambo for the plaintiff  
Kamunde for the defendants  
B. Kosgei - Court clerk