



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC CIVIL SUIT NO. 201 OF 2010

FREDRICK NYAKANGWA
OSORO.....PLAINTIFF

VERSUS

HEZRON MOGERE.....1ST
DEFENDANT
NATIONAL SOCIAL SECURITY FUND.....2ND
DEFENDANT

RULING

The dispute herein involves a property known as Nairobi Block 97/278. There was an agreement for sale between the plaintiff and the 1st defendant whereby the plaintiff was to purchase the said property from the 1st defendant at an agreed price. This agreement was not completed for various reasons which the court does not deem necessary to go into at this stage.

The property is still in the name of the 2nd defendant but the dispute is between the plaintiff and the 1st defendant whereby the plaintiff is accusing the 1st defendant of breach of the sale agreement aforesaid. In his plaint therefore, the plaintiff seeks orders that there be a permanent injunction to restrain the defendants by themselves, their agents, servants, employees and or any other person from claiming through them or from dealing with, alienating, transferring and or wasting the suit property. He also seeks a declaration that the 1st defendant is obliged under the agreement dated 16th July, 2008 to facilitate the transfer of the suit property to him. In that regard he seeks an order that the 2nd defendant do execute in favour of the plaintiff the transfer documents of the suit property failing which the Deputy Registrar of this court do execute the necessary documents to effect the said transfer. There is also a prayer for general damages for defamation and for breach of contract plus costs and interest at court rates.

In the meantime, the plaintiff has moved the court for injunction orders to restrain the defendants in line with injunction orders sought in the plaint pending the determination of this suit. The application is opposed by the defendants and, upon directions, learned counsel for the parties have filed written

submissions. I do not deem it necessary to go into most of the issues raised by the parties herein. My observation at this stage is that, the plaintiff has justified his apprehension that if the injunction orders are not granted he may suffer irreparable loss if the property is alienated, transferred or charged.

My assessment of the material before me is that it is in the interests of all parties herein that the suit property be preserved pending the determination of the issues raised in the pleadings. In so doing, no prejudice shall be visited upon any of the parties in this suit. Accordingly, I order that there shall be an order restraining the defendants from alienating, charging or transferring the property until the final determination of this suit. The costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 27th day of June, 2011

A. MBOGHOLI MSAGHA

JUDGE