



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NO. 156 OF 2011

PAUL KERORO OKEMWA.....PLAINTIFF/APPLICANT

VERSUS

DORA NYAKINYUA MATANDI.....1ST DEFENDANT/RESPONDENT

GIBSON NGIGE.....2ND DEFENDANT/RESPONDENT

RULING

By the Notice of Motion dated 29/6/2011, and brought pursuant to **Order 40 Rules 1(a) and (b)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**, Paul Keroro Okemwa, the plaintiff/applicant seeks orders against the defendant/respondent Dora Nyakinyua Matandi and Gibson Ngige, as follows;

1. Pending the final determination of this suit, the court do restrain the 2nd defendant from selling or transferring either by himself, his agents, servants or any other person from in any way dealing with parcel number Njoro/Ngata Block 1/4985.

The grounds upon which the application is sought are that the applicant entered into an agreement with the 1st respondent on 28/2/2008 for sale the suit land for Kshs.175,000/-. The 2nd respondent, a son to the 1st respondent was party to the transaction and he signed the agreement. The applicant/applicant took possession of the said parcel but the 1st respondent has never transferred the land to the applicant but instead transferred it to the 2nd respondent, or son. This was disclosed by the Search done at the Lands Registry (PKO2). The applicant contends that the applicant acted maliciously, was in cohorts with the 2nd respondent in order to defraud the applicant and that he has information that the 2nd respondent intends to sell the said land. Unless the application is allowed, the applicant will suffer irreparably.

The 1st respondent who was represented by Mr. Orege, swore an affidavit dated 12/5/2011 on behalf of both respondents. She denies that there is any nexus between the purported sale agreement (PKO1) and the suit land; that she never entered into a sale agreement with the applicant nor has the 2nd respondent ever been a witness to any transaction in respect of the suit property. She deponed further that the 2nd respondent sold the suit property to Zachary Ogamba Makana in 2009 who immediately took possession of the same, fenced it using posts and barbed wire and that is where he lives; that in May 2011, Zachary's wife died and was buried on that plot and the applicant took part in the funeral. The 1st respondent urged

that the applicant has withheld material facts and is guilty of laches.

Having considered the affidavits and submissions of both parties, it is evident that the subject land pleaded in the plaint is Njoro/Ngata Block 1/4985. I do note that in the agreement (PKO1) the land allegedly sold to the applicant is Njoro/Ngata Block 1/4025. The Search Certificate dated 23/5/2011 (PKO2) is in respect of Plot 1/4985. I do uphold the respondent's submission that there indeed is no nexus between the suit land Block 1/4985 and the parcel in the agreement as 1/4025. The certificate of official search does indicate that the plot Njoro/Ngata Block 1/4985 belongs to the 2nd respondent Gibson Ngige. It is not the plot that the 1st respondent allegedly agreed to sell to the applicant.

I have seen mutation forms (PKO.4) in respect of Block 1/4025, which was the subject of the sale agreement. It was subdivided into several portions – about 10 plots. The mutation was dated 2/10/09. It seems Plot 1/4985 is a product of the subdivisions now there are several plots resulting from the subdivision of Block 1/4025, how does the applicant know that Block 1/8985 is what was her portion? The applicant should have gone further to demonstrate the relationship between Plot 1/4025 and 1/4985 which she failed to.

The respondent blames the applicant for withholding material facts that the land is already sold to another person who is known to the applicant. Since the status of the land allegedly sold to the applicant is not clearly identifiable, this court will find that the applicant has not demonstrated that she has a prima facie case with high chances of success. It seems money exchanged hands over a piece of land but it is not clear which one or whether the land still exists. The balance of convenience does not even tilt in the applicant's favour. For these reasons, this court declines to grant an order of injunction as prayed. Costs to abide the determination of the suit.

DATED and DELIVERED this 12th day of October, 2011.

R.P.V. WENDOH
JUDGE

PRESENT:

.....for the applicant.

.....for the respondents.

Kennedy – Court Clerk.