



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 564 of 2008**

**VIKTAH MAINA NGUNJIRI.....PLAINTIFF/APPLICANT  
VERSUS  
KARIUKI ENTERPRISES LTD.....1<sup>ST</sup> DEFENDANT/RESPONDENT  
RICHARD NDUATI KARIUKI.....2<sup>ND</sup> DEFENDANT/RESPONDENT  
LEONARD NDUATI KARIUKI.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**R U L I N G**

1. The application before court is the Chamber Summons dated 15/10/2009 brought under Order 39 Rules 1 and 2 of the Civil Procedure Rules and any other enabling provisions of the law seeking orders that:-
  - i) *Service be dispensed with at the hearing of the first instance and this application be certified as urgent.*
  - ii) *There be an injunction against the Defendant, their servants or agents or any other third party from interfering with the Plaintiffs quiet occupation of the suit lands till this application is heard and determined.*
  - iii) *There be an injunction against the defendant their servants or agents or any other third party from interfering with the plaintiff's quiet occupation of the suit lands till this suit is heard and determined.*
  - iv) *A restriction be placed at the lands office in the register in relation to the suit parcels till this suit is heard and determined.*
  - v) *Costs of this application be provided for.*

vi) *Any other relief this court may deem fit to grant.*

2. The application is premised on grounds that the Applicant is an innocent purchaser for value and that unless the orders sought are granted, the Applicant shall suffer irreparable loss and damage. The Applicant says that soon after the purchase, he went into possession and started constructing and that his possession of the 30 suit plots comprised in LR No. 12861/30-66 is threatened by the fraudulent acts of the Defendants herein.
3. The application is also supported by the sworn affidavit of the Applicant dated 15/10/2009. The Applicant avers that he bought the suit plots from the Defendants in the year 2005 as per the Sale Agreement annexed to the affidavit and marked "VMN 1". A look at the said annexure reveals that the Agreement is neither dated nor sealed with the Common Seal of the 1<sup>st</sup> Defendant herein. The Applicant avers that his attempts to complete the transaction have been thwarted by the Defendants herein, especially the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant who are working in cahoots with each other to deprive the Applicant of the suit plots.
4. The application is opposed by the Defendants who have filed a Replying Affidavit sworn by Leonard Nduati Kariuki, the 3<sup>rd</sup> Defendant herein. The deponent says that the Applicant does not say who of the three Defendants he bought the suit plots from and avers that none of the three Defendants have sold any plot known as L.R. No. 12861/30 to 66 to the Applicant. The deponent says that the Applicant in or about the year 2005 invaded the suit plots and attempted to construct a stone wall around the suit plots but that the said construction was stopped after the deponent got to know of the illegal construction. The deponent disowns any Sale Agreement that may have been entered into between the Applicant and the 2<sup>nd</sup> Defendant herein. The deponent denies any collusion amongst the Defendants to deprive the Applicant of the suit plots and says that the suit plots do not belong to the Applicant.
5. In his submissions filed on his behalf by M/s Kimwere Josphat & Co. Advocate, the Plaintiff says that he bought the suit plots for Kshs.9,000,000/= but paid Kshs.6,000,000/= which he says is acknowledged by the Defendants. The court notes that apart from the main Agreement for Sale between Kariuki Enterprises Limited and the Applicant, there are other mini agreements as follows:-
  - (a) *Agreement of sale made on 8/09/2005 under which Richard Nduati Kariuki of Box 2738 Thika and holder of ID No. 8514593 acknowledges receipt of Kshs.500,000/= from Victor Maina Ngujiri (sic) as further down payment for plot of LR 1268. The amount is said to be for additional eight plots at a cost of Kshs.320,000/= each about Kshs. 2,560,000/=.*
  - (b) *An undated Agreement of Sale between Richard Nduati Kariuki of P.O. Box 2738 Thika, and of ID No. 851593 acknowledging receipt of Kshs.2,000,000/= (Two Hundred Thousand) from Victor Maina Ngujiri (sic) as further down payment of plots LR 1268, plots number one to thirty six.*
  - (c) *An Agreement for Sale made on 8/07/2005 between Richard Nduati Kariuki and Victor Maina Ngujiri (sic) in which Richard Nduati Maina acknowledges receipt of sum of Kshs.150,000/= as further down payment for plot LR 1268, Plot Number one to thirty six.*
6. The Plaintiff thus contends that on the basis of the above, and unless the Defendants are restrained by an order of this Honourable Court, he stands to suffer irreparable loss from the mischievous conduct of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Plaintiff further says that he has demonstrated that he has a prima facie case with probability of success.
7. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants filed their submissions dated 7/12/2009 and filed in court on the 8/2/2009. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants' main contention is that they have not sold any plots to the Plaintiff; that the only two directors of the 1<sup>st</sup> Defendant have not executed any Agreement of Sale with the Plaintiff and that the 2<sup>nd</sup> Defendant who purportedly signed several Agreements with the Plaintiff had no authority whatsoever to transact on behalf of the 1<sup>st</sup> Defendant. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants contend that the Plaintiff has not satisfied the conditions set out in **Giella vs Cassman Brown & Co. Ltd. [1973] EA 358** for the granting of injunctions. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants also averred that the Plaintiff has not produced any evidence to show that the plots which the Plaintiff alleges to have bought from the Defendants actually exist.

8. In reply, the Plaintiff says that the only way this dispute can be resolved is by granting the order of injunction pending the hearing and determination of this suit.
9. I have now carefully considered the application as filed and the submissions made. The question that arises is whether the Plaintiff has met the conditions for the granting of the injunctive orders sought. Before answering that question, there are a number of points to note. First, the Sale Agreement between the 1<sup>st</sup> Defendant and the Plaintiff in respect of the alleged Sale of the thirty six (36) plots is not dated and is not sealed with the Common Seal of the 1<sup>st</sup> Defendant. Secondly the Agreement is also not duly registered. The Agreement refers to LR No. 14318 while both the plaint and the Chamber Summons application refer to LR No. 12861/30 to 66. Thirdly, the mini agreements which the Plaintiff annexed to his supporting affidavit refer to LR No. 1268 and are signed by a totally different person from those who allegedly executed the main Sale Agreement.
10. In light of the above findings, I find that the Plaintiff has not established a prima faice case with a probability of success. The Plaintiff is not certain and has not clarified to the court which parcel of land is the suit property. It would also appear to the court that the Plaintiff dealt with two different entities in the alleged transaction. I also find that if indeed the Plaintiff paid any monies towards the alleged purchase, then his remedy lies in damages against the person(s) who received whatever monies the Plaintiff may have paid. In other words, any damage suffered by the Plaintiff in this case is compensable in damages.
11. Accordingly, the Plaintiff's Chamber Summons application dated 15/10/2009 and filed in court on 16/10/2009 is found to have no merit. The same is hereby dismissed with costs to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. The status quo order issued herein against the Defendants is hereby lifted.

Orders accordingly.

**Dated and delivered at Nairobi this 12<sup>th</sup> day of March, 2010.**

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:-

No appearance For the Plaintiff/Applicant

Miss Mugo for Ndambiri (present) For the Defendant/Respondent

Weche - court clerk