



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Civil Case 13 of 2009

JOSEPH KIPLAGAT KOGOS PLAINTIFF

=VERSUS=

FAMILY BANK LIMITED DEFENDANT

RULING

Application for Injunction dated 9th February, 2009.

I. Introduction

1. The Applicant/Plaintiff herein alleges that he had a loan with Equity Bank. The Respondent/Defendant enticed him to transfer his loan to the Defendant organization. They were then a “Family Building Society” but later converted to a Family Bank Limited. The new loan was on a more favourable terms.
2. The Appellant Plaintiffs Plaintiff agreed to this. He entered into a transaction with the Respondent/Defendant that saw him sign a blank land control board form (13.10.2006) saw his security, by way of land title TR 65376 comprising of 42.53 ha LR. 8376/5 being charged and used as collateral.
3. The Land was Agricultural land. No transfer would normally be permitted without the Consent of the Land Control board.
4. The Plaintiff filed this current case on 9th February, 2009 together with an application for injunction restraining the said Respondent/Defendant from dealing with the said land. The reasons being that the transaction between the parties were null void. That the Applicant/Plaintiff did not execute the documents according to law. The transaction from the start was therefore not valid.
5. The orders for injunction were granted exparte till the determination of the application and the main suit

(Mwilu J) on 9/2/2009.

6. In reply the Respondent advocates claimed that the said applicant/Plaintiff had taken the moneys from them. He cannot now say that he would not pay the same. He who comes to equity must come to do equity. That the Plaintiff is not entitled to a claim of injunction. The Applicant/Plaintiff has no intention to pay the debt.

II. Findings

7. There are triable issues raised in this application. The main suit is a declaratory claim to declare that the whole transaction was null and void. That there was no valid land control board, any sale undertaken was illegal.
8. The Respondent/Defendant claim that it was the Plaintiffs who approached them and they were not the ones who enticed him to take up the loan.
9. From the evidence and submissions made it appears that the Respondent /Defendants may have been exercising their rights of Sale that is often described as a Statutory right of sale. If this has occurred and title has moved on there may require the joinder of a 3rd party.
10. The transaction requires to be proved in trial as to whether indeed it was ultra vires null and void? In the meantime, the rights of the parties to preserve the suit property land is reasonable to be given. The Respondent/Defendant asked this Court to observe that the said Applicant has taken their moneys, namely he cannot have the land and the moneys advanced to him at once.
11. This Court finds that a prima facie case has been made out. The Applicant has injunction till the determination of the suit.
12. The costs to the Plaintiff/Applicant.
13. Obiter dictum; Order VI r. 2,3 requires that the Plaintiff should not give a narration of the evidence but state per paragraph the fact/claim briefly. It is hoped that this will be adhered to.

DATED THIS 30TH DAY OF APRIL, 2010 AT ELDORET.

.....
M.A. ANG'AWA
JUDGE

- (i) P. Gicheru Advocate instructed by the firm of M/s Gicheru & Co. Advocate for the Plaintiff - Present*
- (ii) Gitonga Advocate instructed by the firm of M/s Gitonga & Co. Advocate for the Defendant - Present*
- (iii) Okoth Advocate from the firm of M/s Okoth & Co. Advocate for the Respondent/Applicant - Present*