



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Suit 47 of 2010

ELIJAH MAKORI NYANG'WARA.....PLAINTIFF
VERSUS
STEPHEN MUNGAI NJUGUNA & 2 OTHERS.....DEFENDANTS

RULING

(Application for Injunction, dated 24/3/2010)

I. Background

1. On the 24th March 2010 the plaintiff Elijah Makori Nyang'wara filed suit seeking declaratory order against the 1st and 2nd defendant herein that he declared the rightful and legal order of Land Parcel Eldoret Municipality Block 14/122 consisting of 0.3792 Ha. Inter alia.
2. The plaintiffs alleges that he had indeed purchased land from a third party on 1st July, 1997 all along he held title for up to 13 years when he discovered on 4th March 2010, that the said parcel of land had been transferred from himself to the 2nd Defendant.
3. The 1st defendant was arrested and charged in the Chief Magistrate Court Eldoret on 22nd March 2010 in CMCCR 1794/10 for the offence of obtaining property by false pretence contrary to Section 313 of the Penal Code. The 2nd defendant therein being the complainant.
4. The plaintiff filed an application also dated 24th March 2010 seeking orders of injunction against the 1st defendant restraining him and his agents from entering into the land, building any structures, fencing, tiling, selling, transferring, interfering with the boundary or possession of the Parcel of Land.
5. A preliminary order and or injunction order was sought to be registered against the said land.
6. That the 1st defendant be so restrained till the finalization of this suit.

i) Reply by Advocate for 1st Defendant

7. The prayers sought were brought under the Criminal Procedure Code and not the Civil Procedure Rules (This was nonetheless amended in Court as being a typographical error)
8. The main objection to the injunction is that it was the 2nd defendant who was in the wrong and not the 1st defendant. The injunction should not issue.

ii) Reply by Advocate for 2nd Defendant

9. The 2nd defendant was not named and therefore had nothing to add to the application.

II. Opinion

10. It is the 1st defendant who has had criminal charges preferred against him. The plaintiff has demonstrated to this court that the likelihood of the land and its possession to move on from the 1st defendant if restraining orders are not granted. There is a prima facie case made out that a likelihood of further dealing of land was in fact fraudulent.
11. The property requires to be preserved.

12. This court allows the application for injunction. The same accordingly be issued against the 1st defendant as prayed. That further prohibition and inhibition orders against the title be extended by the 3rd defendant commissioner of lands
13. There will be costs to the plaintiff to be paid by the 1st defendant.

Dated this 29th day of April, 2010 at Eldoret

M. A. ANG'AWA

JUDGE

Advocate

D.O. Onyinkwa Advocate instructed by the Firm of M/s Onyinkwa & Company Advocates for the Plaintiff/Applicant

R. Omboto Advocate instructed by the Firm of M/s Rioba Omboto & Company Advocates for the 2nd Defendant/Respondent

J. Okoth Advocate instructed by the Firm of M/s Okoth & Company Advocate for the 1st Defendant/Respondent

P.A. Maloba, an Advocate by the Office of the Attorney General