



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Suit 208 of 2009

JOSEPH H. MAERO OYULA.....PLAINTIFF

VERSUS

OSCAR KIPCHUMBA.....1ST DEFENDANT

ELITE VENTURES LIMITED.....2ND DEFENDANT

R U L I N G

(Application 18th December 2009 for injunction)

I. Background

1. The plaintiff filed suit against the 1st defendant Oscar Kipchumba and the 2nd Defendant Elite Ventures Limited seeking order that he is the rightful owner of Land Parcel LR Pioneer/ Ngeria Block 1(E.A.T.E.C) 1183. this suit was filed on 18 December, 2009 together with a Certificate of Urgency seeking an injunction whereby his court is:

“.....to (restrain) the 2nd Defendant his agent servant or any other person acting under it from trespassing, interfering in any way transferring, constructing or dealing in any way with land parcel No. Pioneer/Ngeria Block 1(EATEC) 1183 pending the hearing & determination of this application and the main suit.”

2. The 1st defendant has never entered appearance but the 2nd Defendant did appear and filed reply to the said application.
3. It is not disputed that defendant No. 1 Oscar Kipchumba is a person who allegedly sold the said parcel of land to the 2nd defendant. He did this fraudulently and is allegedly a wanted man by police.
4. The second defendant is a real estate company. They had bought the land with the purpose of sub-dividing the same and re-selling it. They admit they had bought the parcel of land from Defendant No. 1 and that it did not belong to Defendant No. 1. To rescue the situation they entered into an independent sale agreement with the plaintiff to re-purchase the said parcel of land for a consideration. The plaintiff was in agreement. The defendant No. 1 defaulted in payment. The plaintiff filed this suit for repossession of his parcel of land. He now wants the orders of injunction to restrain the Defendant No. 2 from being on the land.
5. The 2nd defendant does not dispute any of these facts. Only substitutes to make payment.

II. Findings

6. The plaintiff has demonstrated that he is the lawful registered purpution of land parcel Pioneer/Ngeria Block 1(EATEC) 1183. he has agreed to sale the parcel of land to Defendant No. 2 for consideration. The defendant No.2 has failed to

honour their contract within the stipulated time. A breach of the contract has not been denied.

7. The application for injunction is accordingly issued against the defendant No. 2 restraining them and or their agents from dealing with the suit land till the determination of the main suit.
8. The issue before the parties, plaintiff and 2nd defendant is that of contract. The 1st defendant may require to be served by substitutive service on the issue of fraud so alleged. Issue of fraud is against 1st and 2nd defendant.
9. I award costs to the plaintiff.

Dated this 21st day of April, 2010 at Eldoret

M. A. ANG'AWA
J U D G E

Advocate:

G. Kitiwa Advocate instructed by the Firm of M.s Kitiwa & Company Advocates
for the Applicant

G. Chemoyai Advocate instructed by the Firm of M/s Chemoyai & Company Advocate
for the 2nd defendant.