



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

Civil Case 63 of 2006

**BENSON KORONGO LUGASIRI PLAINTIFF
-VERSUS-
DR. JAPHETH OGENDO OWUOR 1ST DEFENDANT
KENYA COMMERCIAL BANK LTD 2ND DEFENDANT**

RULING

Application for Injunction Dated 24th May 2006

I. Background

1. This is a Commercial Law Case. The Kenya Commercial Bank (herein referred to as the Bank and 2nd Defendant herein) are in the process of wishing to sell land parcel LR/Kakamega/Sergoit/12 Comprising of 10 acres that is allegedly said to belong to the Plaintiff (Benson Korongo Lugwiri) (herein referred to as the Applicant)
2. According to the Applicant he wishes to have orders of injunction restraining the Bank from selling the said property the grounds being that he had, on the 6th July 2002 bought the said parcel of land from Dr. Japheth Ogendo Owuor (herein referred to as the 2nd Defendant) for Kshs 700,000/=. He holds good title and does not know why the 2nd Defendant intends to sell the land. To this end, the Applicant filed a case in the Chief Magistrate's Court at Eldoret CMCC No. 414/2006 (which this Court has not seen or perused) but which the applicant withdrew and filed the current Court case in this High Court.
3. The Applicant's main prayer in the Court suit is that of a permanent injunction to restrain the bank from selling his parcel of land. On the same day filing suit he filed an application for an injunction under certificate of urgency dated 24th May 2006 seeking temporary orders of injunction.

II. Delay

4. The application was first in Court exparte on 29th May 2006 (Gacheche J) and was ordered to be served and heard interparte on 14th June 2006.

It was stood over generally by consent.

On 24th January 2009 parties needed more time

adjourned (Court 1)

26th March 2007 matters not reached (Court 1)

8th May 2007 Hon Judges disqualify himself (Court 1)

8th May 2007 Parties needed more time (Bauni J)

31st October 2007 matters not reached (Bauni J)

11th December 2002 matter listed in the wrong Court (Ibrahim J)

4th March 2008 Stood over generally (Bauni J)

26th November 2008 orders that file be heard in High Court No. II (court 2)

18th November 2009 File not taken to Court

13th May 2009 New dates taken service not done (Mwilu J)

4th November 2009 Adjournment granted to Advocate as clients want to be present (Mwilu J)

Hearing 19th May 2010 Interparte hearing under Order IX b r 3(a) Civil Procedure Rules

5. The delay is regretted

III. Application 24th May 2006

6. On the day the application came up for hearing on 19th May, 2010, the Respondent did not attend Court although they were duly served. The hearing proceeded ex parte under Order IX b r 3(a) Civil Procedure Rules.

7. The argument put forward by the applicant is that he paid the full purchase price for the parcel of land in question. The court should therefore issue him with an injunction to restrain the Bank from selling his parcel of land that he spent quite a considerable amount of time to develop. He prayed an injunction to issue pending the hearing of the application and of the main suit.

8. A sale agreement between the 1st Defendant and 3rd parties was annexed to the application together with a Land Certificate in the name of the 1st Defendant dated the 23rd November 2005, no transfer having taken place, the Plaintiff registered as a purchaser interest and placed a Caution on the parcel of land.

9. He also produced as an annexure to his application a notice of sale of the property by the auctioneers on behalf of the Kenya Commercial Bank, and its notification as of 4th March 2006.

IV. On Reply

10. By the Defendant No. 1, that the agreement was breached and was non existence
11. A reply to this application was also filed by the 2nd Defendant. The explanation to the whole matter was given on the 23rd October 2006 whereby the 1st Defendant had borrowed Kshs 1,023,000/= from the Kenya Commercial Finance Company Limited. The land parcel was charged to the said Company sometime in the early 1990 being the said land parcel Kakamega/Sergoit/12.
12. On the 2nd October 2001, the 2nd Defendant Bank took over all the liabilities of the said company being gazette notice 7045 dated 2nd October 2001. The Bank therefore had a right to sell the property to realize its loan to the 1st Defendant. The 1st Defendant filed HCCC No. 42/2006 at Kakamega High Court seeking for injunction which entitled to such injunction. After receiving the answer of the 2nd Defendant in their affidavit, he has not explained clearly whether he in fact wishes to maintain his position on the property.
13. I hereby hold that there is no grounds therein to issue an injunction. The Plaintiff may have been placed in circumstances that may have become embarrassing. The explanation to this Court by the 2nd Defendant is accepted.
14. The application dated 24th May 2006 be and is hereby dismissed. There will be no costs to the 2nd and 1st Defendants as both were absent during the hearing.

DATED THIS 26TH DAY OF MAY 2010 AT ELDORET.

M.A. ANG'AWA
JUDGE.

Advocate:

- (i) Chemitei Advocate instructed by the firm of M/s Chemitei & Co. Advocate for the Plaintiff. - Absent
- (ii) Yano Advocate instructed by the firm of M/s Yano & Co. Advocate for the Respondent - Absent
- (iii) Chemwok Advocate instructed from the Firm of M/s Chemwok & Co. Advocate for the 1st Defendant - Absent