



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

Civil Suit 563 of 2008

PATRICK JOHN NYANJUI.....PLAINTIFF
VERSUS
KARIUKI ENTERPRISES LTD.....1ST DEFENDANT
RICHARD NDUATI KARIUKI.....2ND DEFENDANT
LEONARD NDUATI KARIUKI.....3RD DEFENDANT

RULING

1. Patrick John Nyanjui, who is the plaintiff in this suit, seek an order of interlocutory injunction restraining the defendants, their servants or agents, or any other 3rd party, from interfering with the plaintiff's quiet occupation of Property known as LR. No.12861/7 (hereinafter referred to as the suit property). The plaintiff contends that he bought the suit property from the defendants in the year 2005, and only realized in October, 2009, that the defendants had fenced off the suit property with barbed wire. When he went to the 2nd defendant to complete the transaction, the 2nd defendant became difficult and evasive. Later he learnt from the 3rd defendant that the 2nd defendant had no authority to dispose of the property.
2. The plaintiff maintains that the 2nd and 3rd defendant have simply colluded to deprive him of the property. The plaintiff therefore prays that he be granted an order of injunction restraining the defendants or their agents from interfering with the plaintiff's quiet occupation of the suit property until the suit is heard. The plaintiff pleads that he stands to suffer irreparable loss from the mischievous conduct of the 2nd and 3rd defendants if the injunction is not granted.
3. The defendants objected to the application through an affidavit sworn by the 3rd defendant Leonard Nduati Kariuki. It is deponed that the 1st and 3rd defendants have never sold the suit property to the plaintiff, nor do they own any parcel of land known as LR No.12861/7. It was further contended that the 2nd defendant is not a director of the 1st defendant, nor does he have any capacity to commit the 1st defendant to any transaction.
4. In response to the replying affidavit, the plaintiff has sworn a further affidavit in which he deponed that Kariuki Enterprises Ltd was a family Limited Liability Company, whose shares were equally distributed to the 5 beneficiaries of Peter Kariuki Mwangi, who included the 2nd and 3rd defendants. The plaintiff exhibited statements of account filed in a succession cause involving the estate of Peter Kariuki Mwangi, and two other agreements involving properties sold by the 1st defendant and which agreements were signed by the 2nd defendant on behalf of the 1st defendant.
5. I have carefully considered this application, the affidavit in support and in reply, the annexures thereto, and the submissions made by counsel for the defendants. The application before me being one for an order for interlocutory injunction, the plaintiff has the burden of establishing a prima facie case with a probability of success. The plaintiff should also satisfy the court that unless the order of interlocutory injunction is granted he will suffer irreparable loss. In this case, the plaintiff alleges that he bought the suit property from the defendants in the year 2005. However, paragraph 4 of the plaintiff's supporting affidavit shows that four years later, the transaction had not been completed. The plaintiff has not indicated what efforts if any, that he made to complete the transaction. It would appear that the plaintiff only attempted to complete the transaction after 4 years. That delay has not been explained.
6. Secondly, paragraph 6 of the agreement which was exhibited by the plaintiff shows that there was a provision for liquidated damages of 30% of the purchase price to be paid by any party who is in default of the agreement for sale. Therefore,

it cannot be said that the plaintiff will suffer irreparable loss if the order of injunction is not granted. Moreover, the plaintiff has not demonstrated any special attributes making the suit property unique or priceless.

7. Further, in his chamber summons, the plaintiff has not specifically identified the property in respect of which injunction is sought. Paragraph 2 of the supporting affidavit however, identifies the plot as LR No.12861/7. The injunction sought by the plaintiff is to restrain the defendants or any other 3rd parties from interfering with the plaintiff's quiet possession. Nonetheless, the plaintiff's supporting affidavit reveals that the plaintiff apparently was not in occupation of the suit property, and that the suit property has been bare since the signing of the agreement. In the circumstances the plaintiff has not satisfied the conditions for granting an order of interlocutory injunction, as he has not established a prima facie case with probability of success. Nor has he demonstrated that he is likely to suffer irreparable loss. For all the aforesaid reasons, I find that the application before me has no merit and is accordingly dismissed. Costs shall be in the cause.

Dated and delivered this 25th day of October, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Kuria for the plaintiff
Miss Otieno for the defendants
B. Kosgei - Court clerk