



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CIVIL CASE NO. 14 OF 2010

JOSEAH KIPKIRUI RONO.....PLAINTIFF

VERSUS

GEOFFREY MARITIM.....DEFENDANT

RULING

JOSEPH KIPKURUI RONO, the Plaintiff/Applicant in this suit, seeks in the Plaintiff's Chamber Summons application dated 18th March, 2010 which was supported by the Plaintiff's affidavit sworn on 18th March, 2010 an order for a temporary injunction to restrain the Defendant/Respondent, **GEOFFREY MARITIM**, "either by himself, his agents, servants and/or assigns from subdividing, selling, disposing of or in anyway dealing with the suit land (described as **Kericho/Mogogosiek/316 "the suit land")**". The application was made in the suit herein which was commenced by Plaintiff on 18th March, 2010 seeking a permanent injunction to restrain the Defendant "... from subdividing, selling disposing of or in anyway dealing with the suit land" on the premise that the Defendant on 15th November, 2003 and on 16th August, 2005 sold to the Plaintiff 4 acres and 6 acres respectively of the land comprised in the title to the suit land and that the Defendant holds the said land in trust for the Plaintiff who has paid full consideration. The Plaintiff alleges that he has been in possession of the suit land with the consent of Defendant. The Plaintiff also alleges that the Defendant has entered the suit land and that the Defendant has subdivided and resold to a third party and placed beacons and intends to effect registration of the title to the third party.

The affidavit of the Plaintiff in support of the application shows that a written sale agreement was entered into between the Plaintiff and the Defendant in respect of the suit land (as evidenced by exhibits Nos. "JKR1", "JKR2", "JKR3" and "JKR4"). The dates on which the written agreements for the sale of the suit land were executed were 15th November, 2003 and 16th April, 2005.

The suit land is registered under the Registered Land Act. It is clear it is also agricultural land within the meaning of the provisions of the Land Control Act. **Section 2** of the said Act defines "agricultural land" as

(a) land that is not within

(i) a municipality or a township; or

(ii) an area which was, on or at any time after the 1st July, 1952, a township under the Townships Ordinance (now repealed); or

(iii) an area which was, on or at any time after the 1st July, 1952, a trading centre under the Trading Centres Ordinance (now repealed); or

(iv) a market;

(b)l and in the Nairobi Area or in any municipality, township or urban centre that is declared by the Minister, by notice in the Gazette, to be agricultural land for the purposes of this Act, other than land which, by reason of any condition or covenant in the title thereto or any limitation imposed by law, is subject to the restriction that it may not be used for agriculture or to the requirement that it shall be used for a non-agricultural purpose;

The Land Control Act requires that sale of agricultural land be given consent of the Land Control Board established under the said Act where such sale amounts to a controlled transaction. **Section 2** of the said Act defines a “controlled transaction” to mean one of the transactions specified in **Section 6(1)** of the said Act that are not excluded by **Section 6(3)** thereof. **Section 6(1)** states;-

6(1) Each of the following transactions-

(a) the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is situated within a land control area;

(b) the division of any such agricultural land into two or more parcels to be held under separate titles, other than the division of an area of less than twenty acres into plots in an area to which the Development and Use of Land (Planning) Regulations, 1961 for the time being apply;

is void for all purposes unless the land control board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.

It seems clear that the suit land is agricultural land within the meaning of **Section 2** of Land Control Act and the sale was a controlled transaction pursuant to the provisions of the Act. It is clear also that the sale of the suit land was not accorded consent of the Land Control Board as required by the said Act. The sale of the suit land took place in the years 2003 and 2005. The consent of the Land Control Board should have been sought and obtained within months as required by the Act but it was not. Lack of consent of the Land Control Board rendered the sale void **“for all purposes”** save for the recovery of the price.

In both the Plaint and in the application seeking the injunction, the Plaintiff did not allude to the issue of consent of the Land Control Board although the Plaintiff’s counsel should have been alive to this fact. Indeed, during the hearing of the application, the court asked Mr. Kiprono, the learned counsel for the Plaintiff, whether the consent of the Land Control Board was obtained and the learned counsel responded by saying that it was not obtained. The effect of the lack of consent was to render the sale void. The suit was therefore premised on a void contract and both the permanent injunction sought in the suit and the interim injunction sought in the application is based on a void transaction that is not enforceable in law. The application for interim injunction must therefore fail for the simple reason that as a discretionary remedy, an injunction can only be granted to protect legal or equitable rights. Needless to state, no rights can ensue from the void transaction except the right to sue for recovery of paid consideration as money

had and received. Where, as here, the suit is based on a void contract, the application for injunction must fail as must also the suit.

In the light of the above, I dismiss the application for injunction. I also strike out the suit on the ground that it is incompetent. I do so pursuant to the inherent powers of the court conferred by **Section 3A** of the **Civil Procedure Act Cap 21**. I make no orders as to costs.

DATED at **KERICHO** this 9th day of November, 2010

G.B.M. KARIUKI, SC

RESIDENT JUDGE

COUNSEL APPEARING

Mr. W.R. Kiprono Advocate for the Plaintiff

N/A by the Defendant