

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 174 of 2008

FRANCIS NDIRANGU MWANGI.....PLAINTIFF

VERSUS

RIFT VALLEY ENTERPRISES LTD.....DEFENDANT

RULING

Before me is Chamber Summons dated 13th August, 2008 brought under Order 39 Rules 1 and 3 of the Civil Procedure Rules for orders of temporary injunction to restrain the respondent from interfering, sub-dividing, entering into or taking possession of Nakuru Municipality Block 29/30 (the suit premises) pending the hearing and determination of this suit.

The applicant's claim is premised on the grounds that he is the registered owner of the suit premises which he purchased from the estate of Sawe Arap Titany through a sale agreement between himself and one William Kiplangat Sigilai. That prior to purchasing the property he investigated and was satisfied that the seller was a member of Kalenjin Enterprises Limited, the predecessor of the respondent. That after confirming the status of the suit land he approached the directors of Kalenjin Enterprises Limited who signed all the relevant transfer documents. That in 2008 the respondent laid a claim to the suit property **H.C.C.C.NO.174/2008** and threatened to evict the applicant. In reply to these allegations, it is averred for the respondent that the suit property is registered in its name, that the alleged seller to the applicant had no interest in the suit land having opted for three (3) acres of land being, DUNDORI/MUGWATHI BLOCK 2/149 (KOILEL) having surrendered his interest in the suit land, which was acquired by the respondent in 2000. I have considered these submissions and hold the following view of the matter.

The application is expressed to be brought under Order 39 Rules 1 and 3 of the Civil Procedure Rules. It follows that it must satisfy the conditions for the grant of an interlocutory injunction as enunciated in **Giella V. Cassman Brown Ltd** (1973) E.A. 358. First there must be a *prima facie* case as defined in **Mrao Ltd. V. First American Bank of Kenya** (2003) KLR 125, which *prima facie* case must have a probability of success at the trial. Secondly it must be remembered that normally an injunction will not be granted unless it can be shown that the applicant will suffer irreparable injury which cannot adequately be compensated by an award of damages. If, however, the court is in doubt it will decide the matter on a balance of convenience.

In deciding whether the applicant had demonstrated a *prima facie* case, it is not for this court to inquire into the merit of that case or indeed the respondent's case. What the court is concerned with at this stage is to find out if the applicant's right has been infringed by the respondent's actions which calls for evidence in rebuttal from the respondent. The **H.C.C.C.NO.174/2008** applicant has averred that he purchased the suit property from the administrator of the estate of Sawe Arap Titany. The vendor according to the copy of agreement of sale is one William Kiplangat Sigilai. It is not clear whether William Kiplangat Sigilai is the administrator of the estate of the late Sawe Arap Titany. The applicant has further averred that before he entered into the sale agreement he investigated and found out that the property belonged to the respondent's predecessor in title and that its directors signed title documents. There is no mention of who those directors were or even annexure of what they signed.

Indeed if the applicant investigated the true title holder he would have also annexed a search

certificate. The respondent has annexed to the replying affidavit a copy of a search certificate dated 28th November, 2007 which shows that the property has been in the name of the respondent since March, 2000.

There is also a copy of the green card once again showing the respondent as the registered owner of the property.

Although the applicant has annexed a copy of title deed issued on 1st August, 2006 the search conducted on 28th November, 2007, over one year later, tells a different story. For these reasons, I conclude on this point that the applicant has not demonstrated a *prima facie* case. I would have stopped there but there is a tendency always to consider all the three principles of the **Giella** Case (supra). On the irreparable injury, other than the purchase price of Kshs.1,240.000/= there is no other injury **H.C.C.C.NO.174/2008** the applicant stands to suffer if the injunction is not granted. He has not averred that the respondent cannot compensate him in the sum of Kshs.1,240.000/=.

On the balance of convenience, the applicant has not rebutted the respondent's assertion that he has not occupied the land. The balance of convenience is in favour of the respondent. The application must, for these reasons, fail and the same is dismissed with cost to the respondent.

DATED and DELIVERED at Nakuru this 21st day of July, 2009

W. OUKO

JUDGE