

REPUBLIC OF KENYA
HIGH COURT AT ELDORET
CIVIL SUIT 115 OF 2009

JOHANNAH KIPSOIMO TOOPLAINTIFF

VERSUS

WILLY YATOR ROTICH KAMURENDEFENDANT

R U L I N G

This is an application by way of Chamber Summons dated 24th June, 2009 in which the Plaintiff/Applicant seeks orders that a temporary injunction do issue against the Defendant/Respondent restraining him from encroaching, constructing, wasting, alienating, damaging, selling, charging, or in any other manner dealing with Parcel LR. No. 23100/2 pending the hearing and determination of this suit.

The application is based on the grounds as stated in the body of the Chamber Summons. The application is also supported by an affidavit sworn by the Applicant in which he avers that he purchased the suit land LR. No. 23100/2 in 1993 for the sum of Kshs. 1,200,000/=. He paid the entire purchase price and took possession the same year; that he has lived on the suit land uninterrupted all along; that the Defendant failed to apply for the Land Control Board Consent and has failed to transfer the suit land to him; that on 19th June, 2009 the Defendant sent Valuers by the name Highland Valuers Limited to value the land and he has information that the Defendant intends to obtain a loan and offer the suit land as security and he stands to lose if the Defendant uses the said title to obtain the loan.

The Respondent was served with Summons but did not file any papers to oppose the application. Mr. Birech learned Counsel appearing for the Applicant submitted that the Respondent was paid the whole of the purchase price and gave vacant possession to the Applicant. He further submitted that Applicant has already filed a suit by way of an Originating Summons claiming ownership of the suit land by adverse possession and his suit has high chances of success.

As this application is for an injunction I should be guided by the well known principles in **GUELLA V. ASSMAN BROWN [1973] EA 358**. These are that first the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless it is shown that the Applicant would otherwise suffer irreparable injury which could be not adequately compensated in damages; and thirdly, that if the Court is in doubt as to the existence or otherwise of a prima facie case, it would decide the application on a balance of convenience.

From the affidavit evidence on record and submissions by Counsel, I am satisfied that the Applicant has shown a prima facie case with a probability of success and secondly he has shown that if he loses the suit land he will suffer irreparable loss which would not be adequately compensated in damages.

The application is allowed in terms of prayer (b) of the Chamber Summons dated 24th June, 2009.

DELIVERED AND DATED AT ELDORET THIS 22ND DAY OF SEPTEMBER, 2009.

J. L. A. OSIEMO

JUDGE

In the presence of:-