

REPUBLIC OF KENYA

HIGH COURT AT ELDORET

CIVIL SUIT 116 OF 2009

MALAKWEN ARAP KIMASWAI PLAINTIFF

VERSUS

WILLY YATOR ROTICH KAMURENDEFENDANT

R U L I N G

Before me 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 or charging or in any other manner dealing with parcels of land LR. No. 23100/3, LR. No. 23100/4 and LR. No. 23100/5 pending the hearing and determination of this suit.

The application is based on the grounds as stated on the body of the Chamber Summons and supported by an affidavit sworn by the Applicant. The Respondent was served but did not file any paper in opposition to the application.

The facts which gave rise to this litigation as gathered from the affidavits and the pleadings briefly may be stated. By a Sale Agreement entered into between the Applicant and the Respondent on 13-2-96 the Respondent offered for sale and the Applicant agreed to purchase the suit parcels namely LR. No. 23100/3, LR. No. 23100/4 and LR. No. 23100/5 at the purchase price of Shs. 4,000,000/=. The Applicant paid the entire purchase price and took possession of the suit land and since then he has had uninterrupted possession to date. Despite the fact that the Respondent had received the whole of the purchase price, he failed to apply for the Land Control Board Consent. The Applicant has filed a suit by way of an Originating Summons seeking ownership through adverse possession.

Mr. Birech learned Counsel appearing for the applicant submitted that the Respondent was served with the Summons and has failed to file any papers to oppose the application and urged the Court to grant the orders as prayed. The power to grant or deny an order for injunction is within the discretion of the Court which discretion can only be interfered by the Appeal Court if the discretion was not exercised judiciously.

The conditions for the grant of an interlocutory injunction are: existence of probability of success; likelihood of irreparable harm which would not be adequately compensated for by damages and balance of convenience. The Applicant has satisfied the above principles and the application being not opposed the same is granted as prayed.

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

J. L. A. OSIEMO

JUDGE

In the presence of: