

REPUBLIC OF KENYA
HIGH COURT AT ELDORET

Civil Suit 117 of 2009

SAMWEL KIPKEMBOI CHEBON PLAINTIFF

VERSUS

WILLY YATOR ROTICH KAMUREN DEFENDANT

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 premised on the grounds as stated on the body of the chamber Summons and supported by an affidavit sworn by the Applicant on the 24th June, 2009.

The facts which gave rise to this litigation as gathered from the pleadings and the affidavit evidence briefly may be stated. The Respondent is the registered proprietor of the suit land being LR. No. 23100/6. He offered to sell it to the Applicant and the Applicant agreed to purchase the same. They negotiated the purchase price which was agreed at Sh. 1,000,000/= . The Applicant paid the whole of the purchase price and was given vacant possession but the Respondent failed to apply to the Land Control Board for consent to the said transaction and has failed to transfer the land to the Applicant.

Mr. Birech learned Counsel appearing for the Applicant submitted that despite the fact that the Respondent had received the whole of the purchase price and gave the Applicant vacant possession, he has failed to transfer the suit land to the Applicant. He further submitted that the Applicant has filed a suit claiming the suit land by adverse possession which is yet to be heard and in the mean time he prays for an order of injunction.

The principles underlying the granting or refusal of injunction are well settled in various decisions of the Court of Appeal. Where an injunction is granted it will preserve or maintain the status quo of the subject matter pending the determination of the main suit before the Court.

On an application for an injunction in aid of a Plaintiff's alleged right, the Court will usually wish to consider whether the case is so clear and free from objection on equitable grounds that it ought to interfere to preserve the property without waiting for the right to be finally established. See Halsbury's Laws of England 4th Edition Volume 24 Paragraph 953.

From the materials placed before me I am persuaded that I should exercise my discretion in favour of the Applicant.

Accordingly I grant the application in terms of prayer (b) of the Chamber Summons dated 24th June, 2009. Costs will be in the cause.

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

J. L. A. OSIEMO

JUDGE

In the presence of: