



1. Land and Environmental Law Division
2. Subject of the main suit: Sale agreement
 - a) Claim of coercion to sale land
Misrepresentation of the sale agreement
 - b) Intention of defendant is to prospect the land.
3. Application 2.10.07
 - a) Application for injunction to restrain the defendant company from entering onto the land for purposes of prospecting.
 - b) Land is Trust Land and plaintiffs had no capacity to sell land.
4. Respondent in reply 25.10.07
 - a) That the defendants is a total stranger to the plaintiffs claims.
 - b) The plaintiffs did not disclose the plot number of the subject property
 - c) The sale agreement annexed to the application person mentioned – thereon are not parties to suit.
 - d) All those who are said to be fraudulent are not parties to suit
 - e) The sale agreement exhibited has no stamp duty and thus not admissible.
 - f) No sale agreement exists
 - g) No prima facie case made out.
5. Held:
 - 5.1 Prima facie case held out
 - 5.2 The Land in question is Trust Land
 - 5.3. Capacity to enter into sale agreement with defendant not available to plaintiffs and defendant.
 - 5.4. Defendant denies plaintiffs existence and or transaction with him.
 - 5.5. Injunction to issue till determination of the main suit.

6. Case law

Related case Hccc JR 8407

Hccc2177/07,2178/07

7. Advocate

Simani & Co. Advocates for the plaintiff/applicant – present

P.C. Onduso instructed by P.C. Onduso & Co. Advocates for the defendant /Respondent - present

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 2176 of 2007

REUBEN BROWN KIMANTHIPLAINTIFF

VERSUS

ATHI RIVER MINING LIMITEDDEFENDANT

RULING

I: Introduction

1. Reuben Brown Kimathi is a peasant farmer within the Kanziku market, Kasiku Location of Keutunda sub location.

2. He brings this application dated 2.10.07 seeking orders of injunction against the defendant M/s Athi River Mining Limited to restrain the said defendant from entering on the said defendants from entering or having any dealing with his land.

3. He also file a suit dated 2.10.07 by way of a plaint.

4. Interim orders were given by Rawal J on 19 October 2002 in related files and applied to this file. The matter before court now is for inter parties hearing of this application.

II: Application 2.10.07

5. According to the plaintiff and agent and or servant of the defendant approached him with the intention that they wished to walk on his land. He gave them permission to do so.

6. He then was made to sign a document which to date he has never been issued with a copy. He attached to this application other documents signed by other persons but is similar to his. He then without hesitation did not question this action as he was allegedly coerced to signing the same. If he did not, he would have his land compulsory acquired He referred this matter as a situation of being misrepresented in entering a purported sale agreement. He now wants the sale agreement cancelled.

7. He seeks injunctive orders against the defendant from

“entering prospecting upon or in any way dealing with all the price of land located in Kentuanda sub location, Kanzikuh location Mutomo District till the finalization of the main suit”

III: Reply be respondent filed on 25.10.07

8. The respondent in reply stated that the defendant was a total stranger to them. In his pleading he failed to disclose the plot number of the subject property. The plaintiff failed to display a sales agreement. The one displayed belonged to other parties and as such no proof that an agreement exists. Further the plaintiff is required to state that those who are fraudulent to actually state so and name them. None of these persons should have been enjoined to this suit.

9. The court cannot make orders in vain. As a result the application be accordingly be dismissed.

IV) Opinion

10. In this case there is an apprehension that the plaintiff received Ksh.25,000/- to sell land to the defendant. This sums of money was said to have been given to him when he signed a paper/document.

11. The defendant state no where in the application does it state he is willing to refund the money to the defendant.

12. There seems to be more than the plaintiffs, defendant is said to have dealt with. It is the courts opinion that the apprehension in the mind of plaintiffs in and may be there. That in effect the said respondents deems there was any or valid agreement between the parties. The orders if made would therefore have no effect on them as it would not have been made so in vain.

13. I accordingly allow this application for injunction. I find that the probability of balance of convenience that I do accordingly issue it.

14. I do so with costs to the plaintiff.

Dated this 26th day of February 2008 at Nairobi.

M.A. ANG'AWA

JUDGE

Advocates

Simani & Co. Advocates for the plaintiff/applicant – present

P.C. Onduso instructed by P.C. Onduso & Co. Advocates for the defendant /Respondent - present