



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 1153 of 2005

AGRICULTURE SYNDICATE LTD.....PLAINTIFF

VERSUS

GIMU DEVELOPMENT COMPANY LTD.....DEFENDANT

FRANCIS MUNGAI MBURU.....3RD PARTY

RULING

1. In this matter, the Plaintiff filed suit against the Defendant on 21/09/2005 claiming the following reliefs:?

- (1) *A declaration that the Plaintiff has effectively rescinded the Sale Agreement and that the said deposit of Kshs.5,000,000/= is forfeited to it;*
- (2) *General damages;*
- (3) *Interest on the said general damages;*
- (4) *An order of injunction restraining the Defendant and/or its servants and/or agents from registering a caveat in and with the Ministry of Lands/Commissioner of Lands/Registrar of Lands/Ardhi House at the Lands Registry; and each of them whether by themselves their servants or agents or all of them or any of them or otherwise howsoever from;*
- (5) *A declaration for the Defendant not to interfere in any way with the Plaintiff's aforesaid parcels of lands namely LAND REFERENCE NUMBER 10426/3, 1042/8 as to further diminish the value of the same or jeopardize the Plaintiff's rights in any manner whatsoever and to cause further loss and damage as regards the First Plaintiff's contract with Reedworth Investments Limited as regards the Development of the aforesaid parcels of land for housing or in any other respect whatsoever.*
- (6) *Not to trespass over the Plaintiff's aforesaid parcels of land;*
- (7) *An injunction to restrain the defendant whether by himself its servants or agents or otherwise dealing with the aforesaid LAND REFERENCE 10426/83 and 1042/8;*
- (8) *A mandatory order against the Defendant and its servants, agents or otherwise each and all of them not to interfere with Land Reference Number 10426/8 and 10426/3 in any way whatsoever.*
- (9) *Aggravated Damages;*
- (10) *Exemplary Damages;*
- (11) *Such further and other relief as this Honourable Court may deem fit and just to grant.*

2. The plaintiff's claim allegedly arose out of an agreement of sale dated 10/05/2005 by which, according to paragraph 5

of the plaintiff,

“--- The plaintiff agreed to sell and the Defendant agreed to purchase ALL THAT undeveloped portion of land comprising by measurement approximately One Hundred Acres which piece of land is a portion of ALL THAT land known [as] Land Reference Numbers 10426/3 and 10426/8 situate adjoining Athi River (East) in the Machakos District for the sum of Kshs.45,000,000/= (Kenya Shillings Forty Five Million)”.

3. By the application dated 25/04/2008, the applicant prays that (a) the issues as to liability between the defendant and the Third party herein be determined together with the issue as to liability between the plaintiff and the Defendant in these proceedings; (b) costs of this application be in the cause.

4. The reasons for the application are that the issue before court is as to who between the plaintiff and the 3rd party herein should refund the purchase price of Kshs.11,600,000 to the defendant in a sale of land that failed to take off and further that the said issues are so intertwined that it would save time to have the liability between the plaintiff, the defendant and the Third party determined together.

5. The applicant says that though the plaintiff claims to have received only Kshs.5,000,000/= the rest of Kshs.11,600,000/= was received by the 3rd party in his personal capacity and that a joint hearing of all the parties herein would avoid a repetition of calling the same witness upon the same issues. The applicant's application is brought under Order 1 Rule 18 of the Civil Procedure Rules which provides:?

“If a Third party enters an appearance pursuant to the Third-party notice the defendant giving the notice may apply to the court by summons in chambers for directions and the court upon the hearing of such application may, if satisfied that there is a proper question to be tried as to the liability of the Third party, order the question of such liability as between the Third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the suit as the court may direct; and if not satisfied, may order such judgment as the nature of the case may require, to be entered in favour of the defendant giving the notice against the Third party”.

6. There is evidence on the court file that the 3rd party entered appearance on the 15/04/2008 through the firm of Gaita & Company Advocates. Taking that fact into account, I am persuaded that the instant application is meritorious. Infact the application was not opposed either by way of Replying pleadings or by submissions at the hearing thereof. The Third party's advocates though duly served did not appear. Accordingly, I allow the application and direct:?

(1) *THAT the issues as to liability between the defendant and the third party herein be determined together with the issue as to liability between the plaintiff and the defendant in these proceedings.*

(2) *THAT costs of this application be in the cause.*

It is so ordered.

Dated and delivered at Nairobi this 16th day of May 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:?