

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 2264 of 2007

CHARLES MBUGUA NJUGUNA PLAINTIFF

VERSUS

CHARLES NDUNGU KARIUKI DEFENDANT

RULING

I: Procedure

1. The main suit herein concerns the sale of land (soil) of Land Reference Loc.16 Kiarutara/697 being 5 acres that was originally sub-divided from LR LOC 16 Kiarutara 299.

2. The plaintiff, Charles Mbugua Njuguna had sold the said 5 acres of land to Charles Ndungu Kariuki (the defendant herein) allegedly @ Ksh.200,000/- per acre (soil only). It appears the land contained 107 blue gum trees. This was an investment that was to be sold separately but which the defendant disputes.

3. The defendant admits that a balance of Ksh.246,000/- was owing in the sale agreement but his cheque bounced. He further admits that he replaced this sum which may appear to be denied by the plaintiff.

4. The main disputes between the parties is the areas upon the land. It is alleged that the defendant had no right to this and cut down the same without any right.

5. The plaintiff's filed suit Hccc7/2004 which was withdrawn. The counter-claim in the said suit was also withdrawn. The plaintiff then filed this present suit in the year 2007.

6. The plaintiff further sought injunction orders to restrain the defendant from interfering with the land. The plaintiff wants to rescind the sale agreement which is his prayer in the main suit.

II: Application 9 November 2007

7. The plaintiff served the defendant who failed to appear for the hearing of his application. The hearing proceeded under Order IX B r 3(a) Civil Procedure Rules whereby the court was satisfied that the defendant had been duly served but was absent.

8. In the application the defendant prays that this land in this matter should not be interfered with till the determination of this suit.

9. I make the following orders being that the "status quo" be maintained till the determination of the main suit. That both the plaintiff and the defendant be and are hereby restrained from cutting down any of the 107 trees that is upon the land till the determination of this suit.

10. The costs will be in the cause.

DATED THIS 11 DAY OF JUNE 2008 AT NAIROBI

M.A. ANG'AWA

JUDGE

R. Mutiso instructed by Mutiso & Co. Advocates for the plaintiff/applicant – present

Kagiri instructed by Kagiri & Associates Advocates for the defendant/Respondent – absent