



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 701 of 2004

1. Land and Environmental Law Division

2. Subject of main suit:- Land

LR NO.KIT/101/75

- i) Breach of contract
- ii) No sale agreement signed
- iii) Specific performance

(a) to allow applicant complete construction

(b) mortgage payment the charge from date of execution of that purchase agreement.

(c) Injunction against defence

3. Application 29 June 04 for injunction

(a) Injunction to restrain the defendant servants and or agents from levying distress attacking or interfering with the quiet possession of suit premises.

4. In reply by defendant 27 September 05

(a) applicant failed to honour their delegates

5. Held:-

Injunction to issue

6. Case - Nil

6. Advocates:

M. S. Onyango holding brief for P.B. Koech of Kipkenda Lilan & Co. Advocates for the defendant/applicant

A.S. Masika of Maithya Mohochi & Co. Advocates for the plaintiff/respondent

KENNEDY MWITA

PATRICIAL MWITAAPPLICANTS

V E R S U S

THE BOARD OF TRUSTEES

(Sued on behalf of National Social Security Fund)..... RESPONDENT

R U L I N G

1. BACKGROUND OF APPLICATION

DATED 29TH JUNE 2004 FOR AN INJUNCTION

1. It is not the core business for the Board of Trustees the National

Social Security Fund to deal with property/estate. They are nonetheless owners of land situated in Kitusuru. They advertised and offered for the sale suit premises known as LR NO. Kit/101/175 to Kennedy Mwita and Patricia Mwita the 1st and second plaintiffs on a tenant purchase basis on 13th September 1999.

2. The premises was residential and incomplete. It was agreed that the purchase price be KShs.4 million. This was later added by 900,000/= making a new total of KShs.4.9 million. Both parties are alleged to execute a tenant purchase agreement and that the said building be constructed by 30% level to completion, whereby the building shall have power/electricity to the plot, water supply to plot boundary, tarmac road and storm drainage and perimeter wall to estate.

3. It is alleged that the defendant failed to formally hand over and or execute the tenant/purchase agreement in 2002.

4. It is further alleged that when the defendants finally asked the plaintiffs to take over the suit premises they demanded payment of the mortgage but did not execute the contract agreement which was breached and or incomplete.

5. The defendants attempted to levy distress for alleged arrears owed to them by the plaintiffs. The plaintiffs alleged that the defendant failed to comply with the terms of the initial offer or execute the tenancy agreement to complete the property to the 30% level. The demand notice of 17th May 2004 was rejected.

6. Under certificate of urgency the plaintiffs applied to this court for an injunction.

II APPLICATION 29 June 04

7. They prayed that:-

“ an injunction do issue restraining the defendant, the servants or agent from distressing, attaching and or interfering with the plaintiffs/applicants enjoyment of their tenancy in all the property commonly known as LRKIT/101/175B new Kitusuru Nairobi until the hearing and determination of the suit”.

8. In reply the defendant stated in that it is true the suit premises was offered to be purchased by uninterested buyers on thus that the premises were 30% partially complete house at KShs.4 million. That an upgrade was made for a further addition to the purchase price of KShs.900,000/=. As far as the defendants are concerned the 30% upgrade and completion of premises as required was met.

9. Further the offers made to the plaintiffs were subject to a contract. There is no prima facie case to warrant an injunction. No cause of action in effect arises. That the application be dismissed.

II FINDINGS

10. The applicant/plaintiffs are in control of premises that were offered for sale to them by the defendants. They dispute the terms of contract had not been fully met. The defendants wish to distress for the mortgage /loan due to the defendants.

11. The applicants/plaintiffs allege to have met with conditions but the defendants had failed to so meet with these conditions. The parties wish to be heard but not under the threat of being distressed or stopped from dealing with the part premises.

12. The issue of whether there is in existence a valid agreement, whether there is a cause of action and what did the parties interest and agreement in the alleged contract means, requires to be determined at a trial.

13. I hereby allow the application as prayed and issue an injunction against the respondents till the finalization of this suit.

DATED THIS 30TH DAY OF MAY 2007 AT NAIROBI

M. A ANG'AWA

J U D G E

Advocates:

M. S. Onyango holding brief for P.B. Koech of Kipkenda Lilan & Co. Advocates for the defendant/applicant

A.S. Masika of Maithya Mohochi & Co. Advocates for the plaintiff/respondent