

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Suit 47 of 2007

LONRHO AGRIBUSINESS EAST:.....PLAINTIFF

VERSUS

DAVID KIMITEI BOIT:.....DEFENDANT

R U L I N G

The applicant/plaintiffs seeks for a temporary injunction restraining the defendant/Respondent, his servants or agents from trespassing into, entering upon, planting, transferring, leasing encumbering, taking possession and or in any other way whatsoever interfering with land parcel No. PIONEER/NGEIRA/BLOCK(EATC)/1851 pending the hearing and determination of this suit. He also seeks for an order directing the Defendant/Respondent to deposit the original title deed and transfer form for the said land into court pending the hearing of the suit.

The Respondent, despite being given ample time, did not file grounds of opposition or a replying affidavit. Hearing therefore proceeded exparte.

DAVID KORIR a Manager with the applicant company swore a supporting affidavit. He deponed that the plaintiff company had several links of land in Uasin Gishu district. One was parcel **No. LR.NO.19547(LR..NO.7739/14)** which was subdivided. One of the resultant plot was plot **No. F481** which was later registered as **PIONEER/NGERIA BLOCK (EATC) 1851** subject matter of this suit. The plaintiff started to sell the resultant plots. **Plot No. F481** was offered to a group called Kabogo Self Help Group but they were unable to pay purchase price. It was then offered to Elijah Tuwei who paid the purchase price and took possession. However in the year 2002 the respondent filed a dispute over the land in the Land Disputes Tribunal. the Tribunal awarded the land to the respondent but he was ordered to pay the purchase price. Defendant attempted to enforce the award but there was no objection which was upheld by the court on the ground that no court had been obtained for Land Control Board. The award was deemed as null and void. There has been no appeal against that decision. The defendant however asked the court Executive Officer to execute transfer forms and the land was transferred to him. Applicant said this was fraud. He never signed any transfer forms.

I have considered the application. It is clear that the applicant has a prima facie case with chances of success. He has stated that he never transferred the land to the respondent. The Tribunal award was declared null. It is therefore not clear on what basis or how the respondent caused the land to be transferred to him.

In the circumstances I allow the appeal and grant prayers (c) and (d) as prayed in the application. the applicant will also have the costs of the application.

Dated and Delivered at Eldoret this 11th day of June,2007.

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:

C/C - David

Mr. Were for Gicheru for applicant

N/A for Respondent.