



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

Civil Case 535 of 2005

1. Land & Environmental Law Division
2. Subject of main suit misc. application:- Land
Removal of caution
3. Sale agreement between plaintiff and defendant
 - a) Purchase of land LR Nairobi Block 93/432
 - b) Ksh.1,400,000/-
 - c) Sale of agreement rescinded by applicant
 - d) Respondent places caution on property
4. Application of 19 April 2005
 - a) Prayer to remove caution as noting is left.
 - b) The sale transaction having been rescinded
5. In reply
 - a) payment had been made to director of applicant
 - b) Director denies payment made in connection with sale transaction.
6. Held
 - a) Caution to remain
 - b) Parties to establish who was paid the payments of purchase price
7. Case law – Nil
8. Advocate:

S. Kandere for P. Kakad & Co. Advocates for the plaintiff/respondent - present

M.A. Khan for M.A. Khan & Co. Advocates for the defendant/applicant- present

TWO STAR HOLDING LIMITEDPLAINTIFF

VERSUS

DUNGA QUARRIES LTDDEFENDANT

RULING

1. Background to the application notice motion 19 April 2005 for orders of removal of caution.

1. Two star holding Ltd the applicant herein entered into a sale agreement on 3 June 1999 with

M/s Dunga Quarries Ltd to sell their land registered as Nairobi Block 93/1432 for a consideration sum of Ksh.1.4 m.

2. The respondent duly paid the deposit of Ksh.140,000/-. There was delay in the completion of the transaction which was admitted by both parties. The respondent failed to pay the balance of the purchase price. The applicant recorded the sale agreement. Their explanation was that ksh.850,000/- had in effect been paid to one of the plaintiff directions. The sum they owe amounts to Ksh.410,000/- only which they are willing to pay.

3. In reply the directors of the applicant who is alleged to have received the said sum of money stated that it was true he in effect be received Ksh.850,000/- but that this sum had nothing to do with the sale agreement. The applicant wanted Ksh1.260,000/- paid as the balance of the purchase price and not Ksh.410,000/-. They rescinded the agreement. The respondent had no right to place a caution on the land.

II Finding

4. The issue of the purchase price alleged to have been paid requires to be sorted out. I would accordingly decline to allow this application and hold that the caution remain in place till the determination between the parties as to the purpose of the payment of Ksh.850,000/- made to the applicant.

5. The application is dismissed. There will be costs to the respondent.

Dated this 31st day of July 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

S. Kandere for P. Kakad & Co. Advocates for the plaintiff/respondent- present

M.A. Khan for M.A. Khan & Co. Advocates for the defendant/ap