



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

Civil Case 2128 of 2007

1. Land and Environmental Law Division

2. Subject of main suit - Fraud

i. LR 13330/559

Subdivision No.138 Thome farmers numbers 5 estate Nairobi.

ii) 4 Bedroomed house

iii) Sale agreement been plaintiffs and 1st defendant for a sum of Ksh.11 million

iv) Advocate for both parties M/s Nyaga & Kamundi

v) Sale agreement dated 10.8.07 paid 7 million and took possession. Balance Ksh. 3 million awaiting transfer

vi) Remit agreement for 2 ½ months signed finally

vii) Surprised he is now tenant and not owner

viii) No defendants to court.

3. In reply:

Application 20 September 2007 injunction

i) No appearance from defendants

ii) Application granted

4. Case law

a) Giella v Cassman Brown & Co. (1973) EA 355

b) Olkiombo v County Council of Narok & Another (1991) KLR 560

c) Waithaka v Industrial & Commercial Development Corporation (2000) KLR 374

5. Advocate

S.K. Bundotish for Kale Maina & Bundotish Co. Advocates for the plaintiff

C. Muchiri for Charles Muchiri Njithi & Co. Advocates for the defendant

JOHN KIGOI NDUATI.....PLAINTIFF

VERSUS

CHARLES MUCHIRI NJITHI.....1st DEFENDANT

NYAGA KAMUNDI

T/A NYAGA KAMUNDI & COMPANY ADVOCATES..2nd DEFENDANT

PATRICK MWANGA3RD DEFENDANT

RULING

I: Application for injunction dated 20 September 2007 to restrain the defendants from evicting the plaintiff from the suit properly LR13330/559

A: Back ground to application

1: The plaintiff John Kigoi Nduati, entered into a sale agreement with Charles Muchiri Njithi the 1st defendant herein. He agreed to purchase a house in Thome Farm Estate No.3 plot 138 being a partial sub division of LR 13330/559 for Ksh. 5 million. This 4 bedromed house was vacant.

2. By a sale agreement dated 6 May 2007 duly signed between the parties and which was being executed by the 2nd defendant herein being the advocate for both parties, the plaintiff paid Ksh.7 million. He took possession of the property on 21 July 2007 and moved in with his family.

3. The said 1st defendants agent one Patrick Mwangi herein the 3rd defendant brought to him blank papers to sign. Those papers returned to him and reflected that they were indeed tenancy agreement and not anything to do with the sale agreement. It showed he would be a tenant for 2 ½ months and required to pay rent. At the end of the two months the defendant came to evict the plaintiff from the premises

4. The plaintiff filed this suit on 19 September 2007 and filed on 20 September 2007 under a certificate of urgency application for injunction.

II: Injunction

5. This court directed that the defendants be reserved with the application as the orders ordered for service was too short. On the day called out for inter parties hearing the said defendants herein were absent.

6. The application sought orders that the defendants be restrained from evicting and or auctioning his grounds. He seeks this courts protection and rules on the case law of :-

Giella v Cassman Brown & Co. (1973) EA 39 Olkiombo & Country Council of Naroko & Another

(1991) KLR 560 and Waithaka v Industrial and Commercial Development Corporation (2001) KLR 374.

Whereby the principles followed that there must be a prima facie case with a probability of success, - that the complaint would not be adequately compensated by damages and that the court would decide matters on a balance of convenience.

II: Finding

6. The balance of convenience herein is that the plaintiff has established a prima facie case that he is entitled to an injunction to protect himself and his family from unlawful acts if any from the defendants.

7. I accordingly grant the injunction till the determination of this suit.

8. I order that summons to enter appearance be filed and served upon the defendants.

9. The costs will be in the cause.

Dated this 4th day of October 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

S.K. Bundotish for Kale Maina & Bundotish Co. Advocates for the plaintiff

C. Muchiri for Charles Muchiri Njithi & Co. Advocates for the defendant