

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO

Civil Case 20 of 2006

SAPTET FARM COMPANY LTD.....PLAINTIFF

VERSUS

S.K. SOI & COMPANY LTD.....DEFENDANT

RULING

The plaintiff filed suit seeking, *inter alia*, the eviction of the defendant, his servants, representatives, assigns and heirs from parcel **No. LR 631/294 (Kericho Municipality/Block 5/437)**. Contemporaneous with filing the suit, the plaintiff filed an application under **Order XXXIX rules 1 & 2** of the **Civil Procedure Rules** and **Sections 3A and 63(e)** of the **Civil Procedure Act** seeking to restrain the defendant and its agents from entering, remaining, collecting rents, carrying out construction work of any nature or dealing in any way with the plaintiff's business premises situate on the said parcel No. **Kericho Municipality/Block 5/437**. The grounds in support of the application are on the face of the application. The plaintiff contends that the defendant had secretly constructed a fourth storey on the suit building without putting into consideration the strength of the structure of the building. The plaintiff further stated that the defendant had continued receiving rents from the tenants in the said building even before it had paid the agreed purchase consideration. The plaintiff further contended that it had been denied the right to receive rent and enjoy quiet possession of the said premises which denial could not be compensated in monetary terms.

The application is opposed. Shadrack Kiplangat A. Soi, the managing director of the defendant swore a replying affidavit in opposition to the application. In the said replying affidavit, the defendant admitted that it had entered into an agreement for the purchase of the suit parcel of land for a consideration of KShs.6.5 million. He deponed that the plaintiff had sold him the said parcel of land when they knew that the building on the property had been condemned and was due to be demolished. He deponed that when he took possession of the said building, he undertook extensive renovations to forestal the demolition of the said building. He stated that he had now completed renovations on the building and was prepared to pay the purchase consideration to the plaintiff. He deponed that the plaintiff had refused to be paid the agreed purchase consideration. He stated that it would be in the interest of justice if *status quo* is maintained pending the hearing and determination of the suit. He deponed that he would suffer irreparable damage if the application for injunction is allowed because due to the fact that he had expended a lot of money in renovating the said building in the suit land. He urged the court to dismiss the application with costs.

At the hearing of the application, I heard submissions made by Mr. Kirui on behalf of the plaintiff, and the response thereto made by Mr. Motanya on behalf of the defendant. The two counsels essentially reiterated the contents of the application and the replying affidavit. The issue for determination by this court is whether the plaintiff has established sufficient grounds to enable this court grant it the order of injunction sought. The principles to be considered by this court in determining whether or not to grant an application for injunction are well settled. The plaintiff must establish that it has a prima facie case with a likelihood of success. The plaintiff must also establish that it would suffer irreparable damage that would not likely be compensated by an award of damages. In case of doubt, the application will be determined on a balance of convenience. **(Giella Vs. Cassman Brown [1973] EA 358)**.

In the present application, certain facts are not in dispute. It is not disputed that the suit land referred to as LR No. 631/294 or Kericho Municipality/Block 5/437 is registered in the name of the plaintiff. It is further not disputed that the plaintiff and the defendant entered into an agreement on 30th June 2004 by which it was agreed that the plaintiff would sell the suit land to the defendant for a purchase consideration of KShs.6.5 million. It is apparent that, to date, the defendant has not paid a single cent of the purchase consideration to the plaintiff even though the defendant was given possession of the suit property by the plaintiff. It is evident, from the affidavits filed, that the defendant has undertaken extensive renovations on the suit property without the permission or consent of the plaintiff. It is further evident that the plaintiff has sought to rescind the agreement between itself and the defendant. The defendant deponed that it was willing to pay the purchase consideration to the plaintiff. On the other hand, the plaintiff sought orders of this court to have the defendant evicted from the suit land.

I have evaluated the opposing submissions made in this application. It is clear that the defendant has been enjoying occupation of the suit land for a period of over three years, on the strength of an agreement where it had paid no consideration. The plaintiff therefore has established a prima facie case that it is entitled to enjoy the right of ownership that is appurtenant to it as the registered owner of the suit property. It is apparent that the defendant has been enjoying the right of ownership of the said property yet it had paid no consideration for its purchase. The plaintiff has therefore established that it is entitled to collect rents from the tenants in the said premises. The plaintiff has further established that the defendant has no right to undertake any construction work on the said building or in any way deal with the said premises. In the circumstances therefore, I hereby grant the application for injunction sought by the plaintiff.

The defendant by itself or its agents, is restrained from collecting rents from the tenants, carry out construction work or in any manner howsoever dealing with the suit parcel of land *i.e* Kericho Municipality/Block 5/437 pending the hearing and determination of the suit. This court will however not grant the prayer by the plaintiff that the defendant be barred from entering or remaining in the suit premises. The defendant will however pay a monthly rent to the plaintiff to be agreed or in the event of disagreement, the same shall be assessed by a Land Valuer, to be appointed on agreement by the parties. In the event of disagreement, the parties shall be at liberty to apply. For the avoidance of doubt, the tenants in the said premises shall pay the rents to the plaintiff. The plaintiff shall have the costs of this application.

DATED at KERICHO this 7TH NOVEMBER 2007

L. KIMARU

JUDGE