



REPUBLIC OF KENYA

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

Civil Suit 77 of 2006

SCHON NOORANI.....PLAINTIFF

VERSUS

DAMJI RAMJI PATEL.....1ST DEFENDANT

DEVJI RAMJI BHUDIA.....2ND DEFENDANT

DAVID WAINAINA KEINAMA.....3RD DEFENDANT

RULING

By way of a Complaint dated 26th January 2006 and filed on 27th January 2006, the plaintiff brought this suit against the defendant seeking judgment for permanent injunction to restrain defendants from proceeding with and concluding the sale of the suit premises LR NO.2/636 to the 3rd Defendant and an order of specific performance to issue against the first and second defendants compelling them to complete a contract of sale of the suit premises LR NO. 6/636 to the plaintiff and in lieu thereof the Deputy Registrar of Honourable Court do execute all relevant documents costs of the suit.

The plaintiff's suit is based on an oral agreement between the plaintiff and the first and 2nd defendants whereby it was agreed that the plaintiff would purchase the suit premises at Shs.7 million or at its market rate to be determined by a reputed valuer. The defendants on being served with the summons raised a Preliminary Objection on a point of law. Mr. Aboge for the 1st and 2nd defendants submitted that the suit is brought on the basis of oral Agreement for sale of land which contravenes the mandatory provisions of Section 3

(3) of the Law of Contract Act Cap 23 which provides:

“3” No suit shall be brought upon a contract for the disposition of an interest in land unless

(a) the contract upon which the suit is founded –

(i) is in writing

(ii) is signed by all the parties thereto;

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party.”

But a sale by public auction is excluded.

Mr. Ogola counsel for the 3rd defendant adopted the submissions by Mr. Aboge. Mr. Kingara counsel for the plaintiff conceded that the Agreement upon which the plaintiff's suit is based was not in writing but submitted that the plaintiff was a tenant of the defendant and he had with the consent of the defendant done some developments on the suit premises and that the plaintiff would be entitled to compensation. But compensation is not one of the prayers sought in the plaint.

There are humble authorities that support the provision in the Law of Contract Act (Cap 23) Section 3 (3) that no suit shall be brought upon a contract for the disposition of an interest in land unless some memorandum or note thereof is in writing and signed by the party to be charged.

See *MORGAN VS. STUBENITISKY 1977 KLR 188, WAGICHIENGO VS. GERALD 1988 KLR 406.*

By virtue of the provisions of Section 3 (3) of the Law of Contract Act (Cap 23) the plaintiffs' oral Sale Agreement for the disposition of an interest in land is unenforceable.

The defendants Preliminary Objection is upheld and the plaintiff's suit is struck out. The defendants are entitled to the costs of this application as well as the costs for entire suit. It is so ordered.

Dated and delivered at Nairobi this 16th day of March 2006.

J.L.A. OSIEMO

JUDGE