



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL SUIT 145 OF 2004

RAMJI DEVJI VEKARIA 1ST PLAINTIFF

LELJI SHIVJI KERAI 2ND PLAINTIFF

VERSUS

MUNICIPAL COUNCIL OF ELDORET DEFENDANT

R U L I N G

The application before me revolves around land known as ELDORET MUNICIPALITY BLOCK 8/576 (the suit property’), whose ownership is claimed by Ramji Devji Vekaria and Lalji Shivji Kerai who I shall now refer to as “the applicants”, who seek an order for a mandatory injunction to compel the Municipal Council of Eldoret which is the respondent herein, to forthwith remove it’s staff, servants and/or agents from houses which are on the suit premises to enable the two have vacant possession thereof.

It was the submission of Mr. Njuguna, learned counsel for the applicants that his clients who are bona fide purchasers for value are registered as leaseholders of the suit property and he urged the court to find in his clients favour especially in view of sections 27 and 28 of the Registered Land Act whereby the title is recognized and it takes precedence and is supreme over the respondents’ claims, and also in view of the fact that they have paid the relevant rates, and that if there were any issues of fraud the same should be addressed to the Commissioner of Lands, as the Municipal Council of Eldoret which is the respondent herein was in the picture throughout the transactions which led to the registration of the title in his clients favour.

Mr. Kuloba, learned counsel for the respondent was however of a different view in that it was his submission that the applicants have not established reasons to warrant the granting of the order of mandatory injunction.

The test whether to grant a mandatory injunction or not, is contained in **Vol. 24 Halsbury’s Laws of England 4th Edn. Paragraph 948** which reads:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court things it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff a mandatory injunction will be granted on an interlocutory application”.

This stand was applied in **Locabail International Finance Ltd. V. Agroexport and others [1986] 1**

ALL ER 901 where the court stated that:-

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

I have taken the submissions of both counsel into account and I do note that though the applicants have demonstrated that they are registered as the proprietors of the suit premises, the respondent has filed its defence and counterclaim in which it alleges that the said registration was obtained fraudulently.

Should I grant the order which the applicants seek, it would amount to concluding the matter at interlocutory stage, yet the applicants have not demonstrated that there is any special circumstance or reason to warrant the granting the order, which if granted would determine the suit at this stage. Needless to say, it would not in my humble opinion, be in the interest of justice, as the issue of fraud which is a serious issue and which the respondent raises in this suit requires to be determined conclusively.

But even if I am wrong in the above finding the balance of convenience would tilt in favour of the respondent because it is in occupation of suit premises.

In view of the above, the application is dismissed. Costs shall however be in the cause.

Dated and delivered at Eldoret this 17th day of May 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Njuguna for the applicants

No appearance for the respondents