

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 125 of 2006

JAMES NJUGUNA NJOROGE..... PLAINTIFF

VERSUS

BUTULI HASSAN..... DEFENDANT

RULING

The Applicant herein seeks orders of this Court temporarily restraining the Respondent from transacting in the property known as Title No. Nairobi/Block 125/124 pending the hearing of the suit he has filed against her. In particular, the Applicant desires that the Respondent, her personal representatives, heirs, servants or agents be restrained from charging, letting, renting, selling, carrying out any valuation of the said property, advertising the same for sale and/or in any other manner disposing of the same. the Applicant also prays that an order be made under Section 128 of the Registered Lands Act barring any registration affecting or relating to the ownership, title and/or interest in the property pending the hearing and determination of the suit.

The application is premised on the grounds that the Applicant, on the 27th August 2005 entered into a Sale Agreement with the Respondent whereby the property was sold to him for a sum of Kshs.1,700,000/= of which Kshs.1,120,000/= was acknowledged as already paid and Shs.580,000/= (being balance of purchase price amounting to Shs.470,594, Rates Clearance and Land Rent) to be paid on or before the 7th October 2005. Further grounds are that the Applicant on the 7th October 2005 tendered the balance of purchase price to the Respondent but the latter refused to acknowledge the same or to execute the Transfer delivered by hand together with the money. Instead the Respondent returned the Applicants cheque and draft Transfer via the hand of Agina & Associates Advocates whom she instructed to deny the Sale Agreement.

The said grounds are supported by the Supporting Affidavit sworn by the Applicant on 6th February 2006 to which the Sale Agreement is annexed as "JNN 1", and the cheque in respect of the balance of purchase price as "JNN 2". The rates receipts and Land Rent receipts are also exhibited as part of annexure "JNN 2" hence completing the evidence as to the payment of the balance of Shs.580,000/=. There is no dispute that the said sums were indeed paid to the Respondent who has also not filed any Replied affidavit to refute the Sale Agreement or the payment of the agreed purchase price. I do not think a mere denial by M/S Agina & Associates under annexure "JNN 4" suffices to deny the Applicants claim.

Agina & Associates, on behalf of the Respondent filed a Statement of Grounds of Opposition stating inter alia that the application for interim injunction is misconceived, bad in law and therefore not maintainable and that the application for a prohibition under S.128 of the Registered Land Act lacks merit. They therefore termed the application an abuse of the process of Court.

In his submission Mr. Agina for the Respondent did not expound on the Grounds of Opposition but merely argued that the Applicant has not shown what threat he seeks to prohibit by an order for injunction and that he ought to have lodged a caveat over the property. He argued that no grounds had been set for the prayer for injunction and that the essentials of the leading case of GIELLA -vs- CASSMAN BROWN had not been met.

The suit herein is one for specific performance of the Sale Agreement dated 27th August 2005. It is clear to me that the Applicant is apprehensive that the Respondent may dispose of the property whilst the Applicant has parted with his money and taken possession of the suit premises. That the Applicant has clearly demonstrated a threat to a breach of a contract is good reason for me to find that, having a purchaser's interest, he has established a prima facie case against the Respondent as required by law. That the Defendant/Respondent does not deny the Sale Agreement and says nothing about the Applicant's K.Shs.1,120,000/= clearly shows that unless the Applicants' interests are protected by an order for an injunction he risks incurring irreparable loss incapable of being compensated in damages. It is most unlikely that the Respondent has any intention of repaying him the money in the circumstances. I have no doubt in my mind that the Applicant is entitled to an interim injunction as sought. I therefore do not find it necessary to consider the balance of convenience. As regards the prayer for an inhibition under S.128 of the Registered Land Act I am of the view that the same is consistent with the application before me and that I have the power and discretion to grant the same.

In the circumstances this application is allowed and the same granted in terms of prayer 3, 5 and 6 of the same. As regards prayer 4, I order that any and all dealings by the Respondent relating to Title No. Nairobi Block 125/124 as would prejudice the Applicant's intended purchase be and are hereby inhibited in accordance with S.128 of the Registered Land Act pending the hearing and final disposal of the suit herein.

Dated and delivered at Nairobi this 5th day of May, 2006

M.G. Mugo

Judge

In the presence of:

N/A for the Applicants

Mr. Makori h/b for Agina for the Defendant