



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Case 22 of 2006

**SIMBA HILLS FARM LIMITED
PLAINTIFF**

VERSUS

SULTAN HASHAM LALJI 1ST DEFENDANT

ABDULAZIZ KANJI 2ND DEFENDANT

MADATALLY SIDI 3RD DEFENDANT

JAMES KIMOSBEI TUWEI 4TH DEFENDANT

ISAAC CHEPSIROR 5TH DEFENDANT

SYLVESTER BIWOTT 6TH DEFENDANT

RULING

SIMBA HILLS FARM LIMITED, which is the applicant herein seeks an order to restrain SULTAN HASHAM LALJI, ABDULAZIZ KANJI, MADATALLY SIDI, JAMES KIMOSBEI TUWEI, ISAAC CHEPSIROR, and SYLVESTER BIWOTT, who are the 1st to the 6th respondents respectively, from *‘interfering with, trespassing onto, surveying, subdividing, alienating, selling, transferring or in any other way doing anything over and in respect of all that parcel of land namely L.R. 8340 (‘the subject land) situated at Eldoret North, Moiben Division in Uasin Gishu District measuring 1680 Acres pending the hearing of this application and pending the hearing and determination of the suit herein’.*

The application is based on several grounds, but mainly that though the applicants purchased the subject land from the 1st respondent at a consideration of K. Shs. 1,200,000/-, and obtained consent of the Land Control Board for the subdivision and transfer, he has however refused to transfer the subject land to them and is instead in the process of transferring it to the 4th, 5th & 6th defendants who were not a party to the alleged agreement for sale.

I have taken the pleadings and submissions of both counsel and the 4th, 5th & 6th defendants who appeared in person and I am well alive to the legal position that in an application of this nature, it is for the applicant to demonstrate that firstly, he has a prima facie with a probability of success; secondly that

he stands to suffer irreparably and that damages would not be an adequate remedy, thirdly where in doubt, the court should decide the matter on the balance of convenience. That position was laid down in **Geilla v. Cassman Brown & Co. Ltd (1973) EA 358**.

Though Mr. Okara, who appeared for the applicants claims that his clients paid the full purchase price.

Mr. McCourt, who appeared for the 1st respondent who opposes the application pointed out that the acreage which was due for sale is in dispute. He also pointed out his client returned the sale proceeds to applicants' advocate, after which he entered into an agreement over same land with other parties, which submission was corroborated by the 4th, 5th and 6th defendants.

It is my humble opinion that the applicants did not pay the sale proceeds as alleged, either directly, or through its financiers, for the 1st respondent has demonstrated that whatever he had received in part payment was returned to the applicants, which fact they did not controvert. It therefore clear that not only did they fail to pay for the land but that only 840 and not 1680 acres of the land was due for sale.

I thus form the opinion that the applicants who never paid the purchase price, have not been able to demonstrate that they have a prima facie case with a probability of success, nor have they satisfied the other conditions for the granting of the orders which they seek and I do in the circumstances dismiss this application with costs.

Dated and delivered at Eldoret this 11th day of October 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Okara for the applicant

Mr. Ougo holding brief for McCourt for the 1st defendant

No appearance for the 6th defendant

4th & 5th defendants in person