



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Suit 81 of 2005

JAMIN KIOMBE LIDODOPLAINTIFF

VERSUS

EMILY JERONO KIOMBE1ST DEFENDANT

THE HON. THE ATTORNEY GENERAL2ND DEFENDANT

RULING

The parties to this suit are Jamin Kiombe Lidodo against Emily Jerono Kiombe, and the Hon. Attorney General on behalf of the Soy Land Disputes Tribunal ('the Tribunal'). The matter revolves around the property known as Moi's Bridge/Moi's Bridge Block 8 (Natwana ADC/68 hereinafter called "the subject property").

Following a complaint by Emily Jerono Kiombe to the Tribunal, it awarded her the subject property, and the award was adopted by the Chief Magistrate at Eldoret on 7/5/2004.

Jamin who maintains that the Tribunal did not have the relevant jurisdiction deliberate over matters pertaining the subject property, and who thus claims to be its registered proprietor has moved this court in an application in which he seeks to restrain Jerono '*on her own or through her known agents, servants and or employees namely Anna Chirchir Keino and others by means of temporary injunction from trespassing, cultivating, working upon the portion of the subject property known which he currently occupies pending the hearing of the main suit or thereafter*'.

It is also his prayer that pending the hearing of the above application Jerono '*her agents and or servants be restrained by means of temporary injunction from in any way interfering or ejecting*' him from the portion of the subject property which he currently occupies and utilizes'.

He also prays for costs.

He bases his application on several grounds but mainly that despite the fact that he was the first registered proprietor of the subject land, where he has resided continuously, Jerono, has started settling strangers on the subject property in an effort to evict or eject him from the land.

Jerono, who I shall now refer to as ("the respondent") defends the suit and alleges fraud whose particulars are that she acquired the subject property on 5/6/1979 upon which she was registered as its first registered proprietor but that Jamin ("the applicant") had it registered in his name an act, which she

claims was without her knowledge or authority and hence fraudulent; that the said entry was reversed to her name on 7/5/2004, despite which the applicant has embarked on disposing of portions of the land.

It was the submissions of Mr. Mbugua for the applicant that his client was registered as proprietor of the subject property on 2/11/1995, and that in the circumstances he has a prima facie case with overwhelming chances of success especially in view of the fact that the Tribunal had no right to transact any issue over the subject property, and despite that fact the respondent has started selling portions of the said property to the third parties which action has seriously hampered his activities on the land. He urges the court to preserve the subject property by way of an injunction.

Mr. Gicheru for the respondent however urged the court to find that the applicant had not demonstrated any wrong doing by the respondent, neither had he furnished proof of purchase, yet there is sufficient proof to show that he is the one who has been selling the land, which is currently registered in the respondent's name. It was also his submission that Anne Keino who is mentioned in the prayer is not a party to the suit and I am inclined to agree with him that that being the case this court cannot bar or issue orders against her, for if granted, it would be tantamount to evicting the said Keino from the suit without giving her an opportunity to be heard.

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**.

I have taken the submissions of both counsel into account and it is clear to me that though the applicant is and has been in possession of the subject land, its ownership is in dispute, as shown in the respondent's defence and counterclaim to which the applicant has filed a reply. In my humble opinion, where one is faced with such a situation, and especially where the applicant has not even shown that he holds the relevant title to the subject land, it would be safe to assume that he has no prima facie case with a probability of success. The respondent has deponed that she does not live on the land. The fact that he has not controverted the respondents depositions that he is the one who actually sold a portion of the property to Anna Keino would tend to dilute his case even further, and in my humble opinion, he would not qualify for the orders which he seeks.

I therefore find that this application lacks in merit and I dismiss it with costs.

Dated and delivered at Eldoret this 5th day of October 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Were holding brief for Mr. Gicheru for the respondent – 1st

Mr. Kigamwa holding brief for Mbugua for the applicant