



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL SUIT NO. 23 OF 2003

WASHINGTONE KING'ASIA MUNYASIA PLAINTIFF

VS

DAVID NDALILA SILALI 1ST DEFENDANT

THE CHAIRMAN LAND

**CONTROL BOARD SIRISIA DIV 2ND
DEFENDANT**

RULING

By a summons dated 2nd December 2003, the plaintiff sought for two main prayers namely: Leave to amend the plaint and secondly for an order of injunction against the 1st Defendant BY himself his agents, workers or servants from occupying, utilizing, tilling, interfering with the boundary or in any way dealing in any part of Land Parcel No. Malakisi/N. & C Namwela/584 and or presenting to the Land Registrar, Bungoma in respect of the aforesaid parcel of Land, mutation forms and transfer forms signed by the plaintiff on 26.3.2003 or any other document effecting transfer of the suit premises pending the hearing and determination of this suit.

The application is stated to be brought under the provisions of Order VI A rule 3 (I) and order XXXIX rules 1 and 2 of the Civil Procedure rules. The application is supported by the affidavit of Majune Kraidon and Washington King'asia Munyasia the applicant herein.

The first prayer relating to the prayer for the amendment of the plaint was granted by this court on 14.1.2004 by consent of the parties. The plaintiff in the amended plaint is praying for the nullification and cancellation of the letter of consent granted by the 2nd defendant to the first defendant on 19.3.2003 in respect of title parcel number MALAKISI/N & C NAMWELA/584 and for an order for a refund of the purchase price.

The 1st Defendant opposed this summons by filing a replying affidavit sworn on 9th January 2004.

Actually what is remaining for me to decide at this stage is whether to grant or not an order of injunction. The plaintiff has shown that he is the registered owner of the suit premises known as MALAKISI/N & C/NAMWELA/584 which land is registered in the name of Andrew Wanambisi King'asia as trustee for the plaintiff. The plaintiff alleged that the 2nd defendant tricked him on 19.3.2003 into signing a transfer form in favour of the 1st Defendant and he annexed to his affidavit in support of the chamber summons a copy of the Sirisia Land Control Board Consent dated 19.3.2003. The first defendant denied having tricked the plaintiff to sign any transfer form to him. The 1st dismissed the plaintiff's averments as merely speculative.

I have closely perused the annexed letter of consent dated 19.3.2003 attached to the affidavits of both the applicant and the respondent. The same reveals that consent was given to the plaintiff/applicant to subdivide parcel No. MALAKISI/ N & C NAMWELA/584 into two portions. The applicant has not annexed any other document to show that he was granted consent to transfer the suit premises to the defendants nor any other person for that matter. The applicant has not also shown in any form of evidence that he has signed the necessary mutation forms pursuant to the consent of 19.3.2003. In the absence of this piece of evidence then I am bound to agree with the submissions of Mr. Makali for the 1st Respondent that the allegations and averments of the plaintiff are merely speculative. In other words the applicant has no prima facie case with a probability of success.

The second ground argued by the plaintiff applicant is that the 1st defendant has started interfering with the lawful boundary by removing boundary features. It was the view of the applicant that the only effective remedy is to restrain the 1st defendant from continuing with the injurious acts. The 1st Defendant opposed this line of agreement stating that the dispute does not fall within the ambit of this court but within the jurisdiction of the Land Registrar pursuant to the provisions of sections 21 and 22 of the Registered Land Act (Cap. 300 L.O.K.)

I have carefully examined the provisions of sections 21 and 22 of the Registered Land Act in relation to disputes over Land Boundaries. I think I am in agreement with the submissions of the 1st defendant's counsel that disputes over boundaries are within the province of the Land Registrars and not courts. On that score the applicant's application must fail.

The applicant has not shown how he would suffer irreparable loss. The 1st Defendant has shown in his replying affidavit that he has been in continuous occupation of the suit premises since 1991. This fact is not denied by the plaintiff/applicant save for the fact that he states that the 1st Defendant was put into occupation by a person who had no jurisdiction to do so.

The law on the grant for an order of injunction is well settled. It is in my humble view that the applicant has not satisfied even a single principle of the principles of granting injunctions to enable me exercise my discretion to grant him an order of injunction. The plaintiff has not also been candid to this court in that he failed to disclose the fact that the respondent has been in continuous occupation of the suit premise for over a decade. This is a material non-disclosure which enjoins this court to discharge any ex parte orders given to the applicant.

In the final analysis, this application is dismissed for lack of merit with costs to the respondent.

READ AND DELIVERED THIS 10th DAY OF February, 2004.

J.K. SERGON

JUDGE