



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 1412 OF 2001**

**TOM OTIENO OSIMBO ..... PLAINTIFF**

**VERSUS**

**GEORGE S.N. MBURU ..... DEFENANT**

**R U L I N G**

I have perused and considered the Plaint in this suit, the Application before me, the Affidavit in support of the same application, the Replying Affidavit and the annexures to both affidavits. I have also considered the able submissions by the learned counsels for the parties.

First under Section 3(3) of the Law of Contract Act Chapter 23, Laws of Kenya. It is clear that no suit shall be brought upon a contract for the disposition of an interest in land unless the contract upon which the suit is founded is in writing and is signed by all the parties thereto and the signature of each party signing has been attested by a witness who is present when the contract was signed by such party. Here the Applicant himself says the alleged agreement for sale annexed as TOO2 is not a proper agreement as it does not state the date on which it was entered into; it does not state the proper year, merely saying it was made on an unknown date in the year two thousand which is not the correct year and that it was executed and the purchaser's signature is not attested and I agree with him. If that be so then where is the agreement in writing upon which the Applicant's suit is founded as is required by law? None. He relies on oral evidence which is not enough as the law requires that such agreement, being for the sale of land must be reduced into writing. That in effect means that the suit itself is not properly before the court and no prima facie case has therefore been established to warrant granting of an injunctive order.

Secondly, there is no evidence that the Respondent is making any attempt to enter into agreement with any other person over the same disputed piece of land and as to what Plaintiff calls harassment all I see are two letters couched in polite language raising pertinent issues on the construction which was started by the Applicant on Plot No. 2259/477 in respect of which sale transaction is not as yet completed. A letter from the Applicant's advocates to the Respondent's advocates dated 10th May 2001 and marked as Ex GM2 seems to be a fair answer to the complaints and that should have ended the matter altogether. What then am I being asked to injunct the Respondent from doing? Court's orders cannot be issued in vain.

Thirdly, if the Applicant has only paid K.shs 250,000/- in respect of Plot No. 2259/477 and there is no agreement as to the completion date as the only agreement existing in writing is being disowned by the Applicant, then how can I stop Respondent from selling his land to any other willing buyer? In the alternative, if the agreement is acceptable and the Applicant has not honoured it, then on what basis would I stop the Respondent from seeking a better deal elsewhere?

In my humble opinion, this application is an abuse of the court process. Courts cannot stop a party from realising the proceeds of his labour on such flimsy grounds. If the Applicant is ready to complete the deal within two months from today as he says he is then let him approach the Respondent and amicably agree on that but on my part I see no reason to interfere with the rights of the Respondent upon the evidence before me.

Application dated 13.9.2001 is hereby dismissed with costs to the Respondent. Orders accordingly.

Dated and delivered this 24th day of October 2001.

**ONYANGO OTIENO**

**JUDGE**