



REPUBLIC OF KENYA



Dannel Commercial Partners Limited v Peresian & 3 others (Environment & Land Case E014 & E2 of 2020 (Consolidated)) [2022] KEELC 2244 (KLR) (5 May 2022) (Ruling)

Neutral citation: [2022] KEELC 2244 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E014 & E2 OF 2020 (CONSOLIDATED)
MN GICHERU, J
MAY 5, 2022

BETWEEN

DANNEL COMMERCIAL PARTNERS LIMITED PLAINTIFF

AND

NANCY PERESIAN 1ST DEFENDANT

TIMOTHY KORES LEMEIRUKO 2ND DEFENDANT

KAJIADO DISTRICT LAND REGISTRAR 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT & LAND CASE E2 OF 2020

BETWEEN

DANNEL COMMERCIAL PARTNERS LIMITED PLAINTIFF

AND

NANCY PERESIAN 1ST DEFENDANT

TIMOTHY KORES LEMEIRUKO 2ND DEFENDANT

KAJIADO DISTRICT LAND REGISTRAR 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT



RULING

1. This ruling is on the Notice of Motion dated 10th March, 2021. It seeks a temporary injunction to restrain the first and second Defendants or anybody claiming through them from alienating, grabbing, interfering with, transferring or in any way dealing with land parcel number KJD/Kitengela/42740 pending the hearing and determination of the suit.
2. Other prayers are that the same Defendants give vacant possession of the suit land to the Plaintiff, the third Defendant be ordered to produce the Green Card for the suit parcel and to remove the caution registered against the land and that the OCS Kitengela police station do enforce compliance with the above orders.
3. The motion is brought under Order 51 Rule 1 Civil Procedure Rules, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act and all enabling provisions of the law.
4. The application is supported by an affidavit sworn by Dan Awendo, the of the Plaintiff's Director in which he says that he bought the suit land by making a part payment of Kshs.14 Million out of the agreed purchase price of Kshs. 31, Million.
5. The balance of Kshs. 17 million was to be paid by 30th May, 2013. When he went to subdivide the land in March, 2013, he was denied entry on the ground that the land had not been sold to him.
6. The application by the Applicant is opposed by the Respondents who have sworn a replying affidavit dated 2/8/2021. In brief, the Respondents deny that the suit land was ever sold to the Applicant. Instead, one Job Kariuki, a son in law to the deceased fraudulently acquired the title documents to the land. He was arrested and prosecuted in a criminal case.
7. Counsel for the parties filed written submissions on 4/3/2022 and 5/4/2022.
8. I have carefully considered the Application in its entirety including the affidavits, the grounds and the submissions and I make the following findings;
9. Firstly, the Applicant has not established a prima facie case with a probability of success. He has on his own admission said that he did not pay the full purchase price. He only paid Kshs. 14 Million instead of Kshs. 31 Million. He has not annexed evidence to show that he paid the 14 million that he says he paid to the late mother of the first and second Defendants.
10. Secondly, the Applicant has not proved that he stands to suffer irreparable loss that cannot be adequately compensated by an award of damages.
11. Finally, he has not proved that the balance of convenience tilts in his favour because he is not in possession of the land. The principles prerequisite to the granting of an injunction as per the case of *Giella v Cassman Brown* (1973) E A 358 have not been met as far the grant of an injunction is concerned.
12. It is also noteworthy that the application has not been brought under the correct provision of law namely Order 40 Civil Procedure Rules. It has been brought under Order 51 which deals with ordinary applications.
13. The above notwithstanding, I find that one of the prayers in the Notice of Motion dated 10/3/2021 is merited, namely prayer 5.



14. Under Article 35 of *the Constitution*, every citizen has the right of access to information held by the state. The information that the Plaintiff seeks is crucial to his case and it is its constitutional right to access this information.

15. For the above stated reasons, I dismiss the prayers in the Notice of Motion save for prayer number 5.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF MAY, 2022.

M.N. GICHERU

JUDGE

