



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**ELC NO. E030 OF 2021**

**GREGORY LANCE STEDMAN.....PLAINTIFF**

**VERSUS**

**SILAS KIPTOO KIBIL..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 27<sup>th</sup> April, 2021 in which the Applicant seeks the following orders:-

1) Spent

2) Spent

3) The Defendant by himself, his agents, servants, employees or any other person acting for or his behalf or claiming through him be restrained by way of a temporary injunction from entering into, trespassing, cultivating, planting, selling, leasing, completing any disposition whatsoever or otherwise interfering with the Plaintiff's quiet possession of the land known as **provisional plot No.E150** being part of **Elgeyo Border Wheat Farm L.R.Numbers 10930, 6802 and 75557/2** pending the hearing and determination of this suit.

4) The Plaintiff be awarded costs of this application.

2. The Applicant contends that in or around the year 2014, he purchased a plot known as Provisional Plot No.E.150 from Elgeyo Border Investment Company Limited for a sum of Kshs.4,500,000/= which amount he paid in full. He was put in possession and started farming on the ten (10) acres land.

3. The Applicant travelled to Australia and left the land in the care of a caretaker. On the 26<sup>th</sup> April, 2021, he received a message from the caretaker who informed him that the Respondent had forcefully invaded the land and ploughed it. It is on this basis that he prays for an injunction against the Respondent.

4. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 31<sup>st</sup> May, 2021. The Respondent contends that he purchased the same property which is being claimed by the Applicant from Elgeyo Boarder Investments Company Limited on 23<sup>rd</sup> April, 2021 at a consideration of 12,000,000/=. This is after carrying out due diligence and being informed that the land was available for sale.

5. The Respondent has taken issue with the fact that the Applicant's sale agreement is not dated and or signed by the vendor and that there is no evidence of payment of the purchase price which the Applicant alleges to have paid.

6. The parties were directed to canvass the application through written submissions on 3/6/2021. As at 23.6.2021, it is only the Respondent who had filed his submissions. The Applicant was granted the last chance to file his submissions. Again as at 28<sup>th</sup> September, 2021, the Applicant had not filed submissions. He was given 7 days to file his submissions but at the time of writing this ruling on 26<sup>th</sup> October, 2021, he had not filed any submissions and if any were filed, then they are not in the file.

7. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the Respondent. The only issue for determination is whether the Applicant has met the threshold for grant of an injunction.

8. The conditions for grant of an injunction were well stated in the case of **Giella =vs= Cassman Brown & Co.Ltd [1973] EA 358** as follows:-

***“The conditions for the grant of interlocutory injunction are now, I think well settled. First, an Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which cannot be adequately be compensated by an award in damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”***

9. In the case of **Mr Rao Ltd vs= First American Bank of Kenya & 2 others [2003] eKLR**, a Prima facie case was described as follows:-

***“A Prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”***

10. I have considered the material placed before me and the first question which I will answer is whether the Applicant has demonstrated that he has a Prima facie case with probability of success. To begin with, the Applicant has annexed a copy of a sale agreement which is only signed by him. The vendor’s directors have not signed the agreement. Though, the Applicant alleged that he paid the entire purchase price on execution of the sale agreement, there is no evidence of any payment of the purchase price. I therefore find that he has not demonstrated any prima facie case.

11. The Respondent is already in possession of the suit property and he has demonstrated that he entered into an agreement with the vendor and that he has paid part of the purchase price in accordance with the sale agreement. If it turns out that indeed he purchased the suit property as he alleges, then the property is capable of being valued and he will be compensated.

12. Even if the court was in doubt, still the balance of convenience tilts in favour of the Respondent who is in possession and has prima facie demonstrated that he purchased the suit property. I therefore find no merit in the Applicant’s application which is hereby dismissed with costs to the Respondent.

***It is so ordered.***

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF NOVEMBER, 2021.**

**E.O. OBAGA**

**JUDGE**

In the virtual presence of:-

M/s. Kinyua for Mr.Langat for Defendant/Respondent

Court Assistant – Mercy

**E.O. OBAGA**

**JUDGE**