

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND & ENVIRONMENT CASE NO.97 OF 2016

MARTIN S. MUKHWANA.....PLAINTIFF/APPLICANT

VERSUS

BRENDA NELIMA MWIBANDA.....DEFENDANT/RESPONDENT

RULING

[1]. The applicant filed the application herein under Order 13 Rule (1) and 2 of the Civil Procedure Act Chapter 21 Laws of Kenya 2010.

The applicant prays for restraining Order against the respondent by herself, agents and/or any party claiming under her from evicting the plaintiff from LR Bokoli/Kituni/1461 situated in Misikhu division pending the hearing and determination of this suit. His grounds for doing so are that the title deed was obtained through misrepresentation by the defendant respondent and that the plaintiff will suffer irreparable loss unless the orders sought are granted.

[2]. The respondent has opposed the application herein. She avers that she is the registered proprietor of LR Bokoli/Kituni/1461. That she bought the same with her own money. That the money came from a loan with M/s K-rep bank Ltd. The parties who were once married are now divorced.

[3]. Madam Barasa holding brief for Shikukule for the applicant argued that the suit land was bought by the applicant but was fraudulently registered in the name of the respondent. That the applicant should not be evicted from the suit land.

[4]. Mr. Kweyu Learned Counsel for the respondent in reply stated that the suit land is in the name of the respondent. That the application has not met the threshold of *Giella Versus. Cassman Brown & Company Ltd [CA] [1968] 358* in that no prima facie case has been established and that the plaintiff has not shown that he will suffer irreparable damage incapable of being compensated by damages.

[5]. I agree with Mr. Kweyu. No prima facie case has been made out. Secondly, it has not been shown that if an injunction is not granted, the plaintiff will suffer an irreparable damage incapable of being settled by damages.

This application has no merits and is dismissed with costs to the respondents.

Ruling read in open court in presence of Mr. Anwar.

DATED at BUNGOMA this 6th day of April, 2017

S. MUKUNYA

JUDGE

In presence of:

Court Assistant: Gladys

Mr. Anwar for Mr. Kweyu for Respondent

Shikule for the respondent - absent