



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ELC CASE NO. 125 OF 2013

TAWAI LIMITED.....PLAINTIFF

VERSUS

PHILIP INDIKA KEYA.....1ST DEFENDANT

MARTIN NYONGESA.....2ND DEFENDANT

R U L I N G

The applicant Tawai Limited brought a notice of motion dated 3/10/2013 in which it seeks orders restraining the respondents by themselves, their servants or agents from collecting money from buyers or prospective buyers of portions of LR NO. 5707 belonging to the company. The applicant also seeks a mandatory injunction compelling the defendant respondents to release title documents they are holding to the survey of Kenya in Nairobi to facilitate preparation of deed plans in respect of sub division of the property held by the company. The applicant also seeks costs of this motion.

The applicant contends that the title document in respect of L.R No. 5707 is held by the respondents. That the company is in the process of subdividing the property and that the survey of Kenya is about to conclude preparation of deed plans. The applicant also contends that it has tried to get title document from the respondents so as to complete preparation of deed plans in vain. It is on this basis that the applicant seeks an order compelling the respondents to release title documents to enable completion of the exercise of subdivision

The application is opposed by the respondents who contend that the application is misconceived and that the purported process of survey is not going on as the directors of the applicant wrote to the survey of Kenya asking that the process be halted. The respondents also contend that title documents are not required to be surrendered to the survey of Kenya for preparation of deed plans.

The respondents herein are directors of the applicant company. The applicant has made general allegations that the respondents are collecting money from prospective purchasers and that they should be stopped from this by way of injunction. There is no evidence at all shown that the respondents are illegally collecting money from prospective buyers of the company land. The applicant has annexed a copy of a deposit slip of Kshs.100,000/= made by one Jane Odanga. This amount was deposited into the account M/S Korongo & Co. Advocates. The person who

deposited the money has not sworn an affidavit to show for what purpose she was depositing the money or that the deposit was made on instructions of any of the two respondents.

The allegations by the applicant in as far as illegal collections by the respondents is concern remains unsubstantiated allegations which cannot form a basis for grant of injunction.

As regards the prayer for mandatory injunction, the principles for grant of mandatory injunction at interlocutory stage are now well settled. A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances. A mandatory injunction can only be given at interlocutory stage in only clear cases either where the court is convinced that the matter ought to be decided at once or where the injunction is directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a match on the plaintiff.

In the present case, the applicant contends that prospective buyers are growing impatient and that some of them as in Environment and Land case No. 55 of 2013 have sued the company for specific performance.

I have carefully gone through the supporting affidavit and further affidavits as well as the replying affidavits. It is clear that the directors of the company are not working in unison. Whereas the applicant claims that the process of sub division is nearing completion, the same directors have written a letter to the survey of Kenya asking them to stop the process of survey. It is therefore ironical for the same directors to claim that the process of sub division is nearing completion when the same directors are the ones who have written to the survey of Kenya stopping the process.

I agree with the respondent's position that the persons behind this case are the plaintiffs in Environment and Land case No. 55 of 2013. The directors who compromised the above mentioned case are the ones who are pushing for the release of title documents to enable the plaintiffs in that suit to have title to the land when it is clear that they did not pay for the land and that all the monies he paid were paid to individuals some of whom are not even directors or members of the company. There are no any other so called restless buyers mentioned except the plaintiffs in ELC No. 55 of 2013.

There are no special circumstances shown to warrant issue of mandatory injunction at interlocutory stage. This is a clear case where some directors of the plaintiff/Applicant are trying to steal a match on the defendants. If it will have been the other way round, then a mandatory injunction would have been issued at interlocutory stage.

It is for the above reasons that I find that the applicant's motion lacks merit. The same is hereby dismissed with costs to the respondents. It is so ordered.

Dated, signed and delivered at Kitale on this 13th day of February, 2014.

E. OBAGA,

JUDGE

**COURT: Ruling signed in court in the absence of parties who were aware of today's date.
Court clerk – Kassachoon.**

E. OBAGA,

JUDGE

13/2/2014