



REPUBLIC OF KENYA

High Court at Kitale

Environmental & Land Case 13 of 2013

ABEL ODHIAMBO WERE..... PLAINTIFF

VERSUS

MARGARET AUDI ONG'ARO

.....}

EVERLYNE AKINYI ONG'ARO} DEFENDANTS

RULING

The Plaintiff/Applicant filed a Notice of Motion seeking orders of injunction against the Defendant/Respondents. The application came up for hearing ex-parte on 19/02/2013 when interim orders of injunction were granted. The application finally came up for inter parties hearing on 14/03/2012. The Respondents who were duly served through their advocates did not attend Court for the hearing of the application. The application therefore proceeded in their absence. The Applicant herein Abel Odhiambo Were used to be a friend of the husband of the Respondents Henry Goro Akun who is now deceased whom I shall hereinafter refer to as “the deceased”. Prior to the death of the deceased, the deceased had agreed to sell his property comprised in Title Kitale Municipality LR 2116/260 (I 3679) for a sum of Kshs. 3,000,000/-. The deceased and the Applicant appointed the firm of M/S Onditi & Co. Advocates to act for them. Initial deposit of 900,000/- was paid through the firm of m/S Onditi & Co. Advocates. The deceased was taken ill before a sale agreement could be executed. The deceased succumbed to illness and died before a sale agreement could be executed. The advocate who was to act in the transaction, Mr. Onditi of M/S Onditi & Co. Advocates also died thereafter.

The Applicant and the widows of the deceased who are the Respondents agreed to have Bruce Odeny & Co. Advocates as their lawyers. The Applicant and the Respondents entered into a sale agreement on

condition that the sale was to be formalized upon the Respondents getting a confirmation of grant in respect of the estate of the deceased. The Sale agreement entered into by the Applicant and the Respondents was exhibited in the Supporting Affidavit. The Respondents had the grant of letters of administration of the estate of the deceased confirmed on 13/03/2012.

The Applicant argues that he took possession of the property soon after they agreed with the deceased on its purchase and that he has extensively developed it and that subsequent to the death of the deceased, he has been paying money to the Respondents. He exhibited documents to show payments on various dates. He contends that despite the agreement, the Respondents have been unwilling to carry on with the transaction and that they have of late been sending third parties to the suit property who are asking him to move out of the property on the ground that they have purchased it. It is on this basis that he has moved the Court for orders which he prays in the motion dated 30/01/2013.

I have gone through the application as well as the Supporting Affidavits with its annexures as well as the submissions by Counsel for the Applicant. What has been deponed in the Supporting Affidavit has not been controverted. The principles for grant of temporary injunction were well set out in the case of **Giella Vs Cassman Brown & Co. Ltd. 1973 EA 358.**

“The principles are firstly, an applicant must show a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury and thirdly, when the Court is in doubt, it will decide the application on the balance of convenience.”

In the present case, the Applicant has demonstrated that he entered into some agreement with the Respondents. This agreement has not been denied. He has also demonstrated that he has made payments which have been acknowledged in the said agreement as well as subsequent payments though paid to someone who is not the Respondents at least confirm that there was payment. In the circumstances, I find that he Applicant has shown that he has a prima facie case with probability of success. I therefore grant a temporary injunction in terms of prayer (c) of the Notice of Motion dated 30/01/2013. The Applicant shall have costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 10th day of April, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Namiti for Plaintiff/Applicant

Court Clerk: Kassachoon.

E. OBAGA

JUDGE

10/04/2013