

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1414 OF 1997

DR JOHN NICHOLAS ONDEKO.....PLAINTIFF

VERSUS

DUNCAN W. KIMANI.....DEFENDANT

R U L I N G

The plaintiff's cause of action is grounded on two sale agreements marked "B" and "D" respectively on this record.

The facts leading to these proceedings are brief and are set out in both the plaint and the affidavit in support of the application for an injunction. The defendant is the registered proprietor of a piece of land known as L.R. No. 1/218, Marus Gurvey Road Nairobi. By the two sale agreements referred to above, the defendant agreed to sell to the plaintiff two portions of the said piece of land. The consideration for each parcel was agreed and the defendant acknowledges receipt of the full purchase price for both plots although the plaintiff says he is yet to pay Kshs 90,000/-.

The plaintiff proceeded to fence the portions said to have been sold to him. the defendant attempted to demolish the fence hence there proceedings and the application before me.

There are affidavits in support of the application. The defendant has filed grounds of objection and replying affidavits.

For the plaintiff to succeed he must satisfy the conditions for granting injunctions as set out in the case of Giella -v- Cassman Brown & Co. Ltd. (1973) E.A. 358. These are now common knowledge and I need not set them out. He has to ;show that the contracts for the sale of the two portions are enforceable.

Both learned counsel have taken the court through the two documents (sale agreements) together with the annexures thereto. Some of the issues canvassed during the arguments in the application belong tot he main trial.

The literal glance at the two sale agreements would tell that the basic requirements of the contracts were met. The names of the parties are there. The subject matter was sufficiently set out, consideration was set and other conditions leading to the acquisition of the titles. The plaintiff has performed his part of the contract by paying the purchase price which the defendant t has acknowledged and by erecting the fence, he has taken possession.

If as the defendant says, there are any uncertainties or ambiguities, these can be explained by evidence. For now if the defendant does anything that may adversely affect the interest of the plaintiff who has made full compliance, he has to be restrained by an order of an injunction.

I find that a very strong prima facie case has been presented by the plaintiff and that this being immovable property, an award of damages will not provide sufficient compensation.

The balance of convenience does not arise here but if it were, the scales would still tilt in favour of the plaintiff, considering the distance he has covered in due performance of the contracts of sale.

In the end the application for injunction succeeds in terms of the Chamber summons dated 10th June, 1997. The plaintiff shall also have the costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 16th day of October, 1997

A. MBOGHOLI MSAGHA

JUDGE