



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: OMOLO & LAKHA, J.J.A. & BOSIRE, AG. J.A.

CIVIL APPEAL NO. 76 OF 1997

BETWEEN

WILFRED OANDA KIROCHI.....APPELLANT

AND

DAVID PIUS MUGAMBI ABIDA ALI t/a "ALI & ASSOCIATES"

HALAI DEVELOPERS LIMITED.....RESPONDENTS

(Appeal from a ruling of the High Court of Kenya at Nairobi
(Keiwua J) dated 14th July, 1994

in

H.C.C.C. NO. 636 OF 1994)

JUDGMENT OF THE COURT

We see no valid reason to warrant our interfering with the learned judge's refusal to grant to this appellant the injunction he sought in the superior court. The dispute is over property known as L.R. NO. 209/10721/55 at Halai Estate, Nairobi South. That property is currently registered in the name of HALAI DEVELOPERS LTD ., the 3rd respondent. The appellant's case appears to us to be that he paid KShs.750,000/= as part-payment to purchase the property in dispute. According to the appellant, he was buying the property from the 1st and 2nd respondents who in turn were buying it from the 3rd respondent. The money was in fact paid to M/s Mugambi & Ali Advocates and the appellant's case would appear to be that the firm was buying the property and another one from the 3rd respondent. We know that the main case is still pending in the High Court. But it seems to us on the material on record, that at the hearing of the case pending in the High Court, the appellant would have to prove that the 3rd respondent was a party to the agreement between the 1st and 2nd respondent, on the one hand and the appellant on the other. We are unable to conclude from the material on record that the appellant established, prima facie, that there was privity of contract between him and the 3rd respondent. If the 3rd respondent cannot be compelled to specifically perform the contract, then no such remedy can be awarded against the 1st and 2nd respondent because they are not the registered owner of the disputed property. The learned judge thought that the appellant did not appear to know who the seller was.

We think there is evidence to support that view and we cannot interfere with him. It may be that the

appellant would be entitled to the refund of the money he paid but we do not think that entitles him to an injunction at this stage. That being our view of the matter, this appeal fails and we order that it be and is hereby dismissed with costs to the respondents.

Dated and delivered at Nairobi this 30th day of October, 1997.

R. S. C. OMOLO

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JUDGE OF APPEAL

A. A. LAKHA

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JUDGE OF APPEAL

S. E. O. BOSIRE

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AG. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR