

Kamia v Kariuki

High Court, at Nairobi June 25, 1985

Mbaya J

Civil Case No 2737 of 1984

Advocates

Mungala for Oraro for Applicant

Kawade for Respondent

June 25, 1985, Mbaya J delivered the following Ruling.

This is an application by the plaintiff for an order of temporary injunction under order XXXIX rule 1. It is supported by his affidavit and plaint in which he says that in 1981 he was introduced to the 1st defendant who promised to help him (the plaintiff) to obtain a loan for Kshs 120,000 from the 2nd defendant. The plaintiff, on the 1st defendant's advice, had his (plaintiff's) Land parcel No Muguga/Kanyariri/239 valued as he intended to use it as security for the said loan. It is now alleged by the plaintiff that the 1st defendant subsequently and fraudulently used the security to obtain a loan for himself (1st defendant) from the 2nd defendant. There must be some substance in the plaintiff's allegation of fraud on the part of the 1st defendant because the latter was convicted in criminal case No 3120 of 1982 before the chief magistrate for the offence of obtaining a security by false pretences contrary to section 314 of the Penal Code. The security in question was this parcel of land belonging to the plaintiff. The 1st defendant was sentenced to 12 months imprisonment for the offence.

It is argued for the 2nd defendant that the plaintiff charged his property in question as a guarantor to the 1st defendant and not as a borrower. I am unable to go by that contention in the absence of any contract of guarantee. I have not been availed that document by the 2nd defendant to determine its nature. The court file does not even contain a copy of any proposed defences, in which case I am left to think that there may not be much to rebut what has been deposed by the plaintiff. In the circumstances, and on the balance of convenience, I must grant the plaintiff this application. In case he is right, he stands to lose greatly if his land were to be sold. The damage would be irreparable. Accordingly, the defendants are restrained from selling or in anyway dealing with the plaintiff's parcel of land in question till the determination of this suit. Costs in the cause.