



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO. 24 OF 2019

RICHARD KIPKORIR BETT.....PLAINTIFF

VERSUS

DUNCAN SITIENEL.....1ST DEFENDANT

DICLEY KIMELI NDIYOINE.....2ND DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff claiming to have purchased the suit land from the 1st defendant; 1st defendant leasing it to the 2nd defendant; plaintiff annexing a sale agreement which the 1st defendant claims to be a forgery; plaintiff in the face of the denial by the 1st respondent needed to bring more evidence of the sale and/or possession to succeed in his application; prima facie case not established; application dismissed)

1. This suit was filed on 22 February 2019 through a plaint in which the plaintiff averred that he purchased 2 acres of the land parcel Nakuru/Nessuit Settlement Scheme/848 from the 1st defendant vide a sale agreement dated 13 November 2007. He has pleaded that he paid the sum of Kshs. 100,000/= and took possession of the land but the defendants now want to evict him. In the suit, he has sought orders of permanent injunction against the defendants and also an order for specific performance to compel the 1st defendant transfer title to him.

2. Together with the plaint, the plaintiff filed an application for injunction, seeking to restrain the defendants from the suit land until the case is heard and finalized. It is that application which is the subject of this ruling. To support his application, the plaintiff swore an affidavit through which he annexed the sale agreement that he alleges to have had with the 1st defendant. He deposed that the 2nd defendant claims to have leased the land from the 1st defendant and the defendants now want to evict him.

3. The defendants/respondents have opposed the application through the replying affidavit of the 1st respondent. He has deposed inter alia that he is the owner of the suit land and has a certificate of allocation from the Government which he has displayed. He averred that in the year 2007, the plaintiff willingly and voluntarily paid his college fees of Kshs. 20,000/= at Koru Bible College. He has deposed that he is a total stranger to the applicant's allegations of purchase of the suit land and of the sale agreement that the plaintiff has annexed. He has refuted the signature in the sale agreement and has asserted that it is false and malicious for the plaintiff to allege that he sold to him the suit land.

4. I have considered the application together with the submissions of Mr. Chege for the plaintiff and Mr. Olaly Cheche for the defendants.

5. This is an application for injunction and the principles upon which such an application is determined were set out in the case of ***Giella vs Cassman Brown (1973) EA 358***. One needs to establish a prima facie case with a probability of success and also show that he stands to suffer irreparable loss if the injunction is not granted. Where the court is in doubt, it will decide the application on a balance of convenience.

6. The plaintiff's case is that he purchased the suit land from the 1st respondent but this is of course refuted by the 1st respondent who has categorically denied having executed any sale agreement with the plaintiff. At this stage of the proceedings, it is very difficult for me to establish who between the plaintiff and the 1st defendant is telling the truth. But given the rebuttal of the 1st defendant, I think the plaintiff needed to adduce more evidence to buttress his claim that he indeed purchased the suit land and that he has been in possession of it. He could very well have asked those who are said to have witnessed the agreement swear an affidavit or asked the Chief of the area or somebody who would be in a position to tell what has been happening on the land to also swear an affidavit. The plaintiff has also not informed the court what he has been doing on the land since 2007 save to only state that he took possession after the sale of the land. It is also not clear to me how come the plaintiff has no documents of title despite having fully paid for the land. Did he ever ask for the title to the land and if so what was the response of the 1st defendant? It is also not said why the parties have never applied to the Land Control Board or taken steps to have the land transferred to the plaintiff if indeed he fully paid for the land in the year 2007 which is about 12 years back. The conduct of the plaintiff is not one of a party who has fully purchased land and fully paid for it.

7. Given these gaps, I am not persuaded that the plaintiff has established a prima facie case with a probability of success and that being the case his application for injunction must fail. I hereby dismiss the same. It follows that for the duration of this suit, the plaintiff will need to stay away from the suit land. The plaintiff will also shoulder the costs of this application.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 20th day of March 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. B.N Kipkoech holding brief for Mr. Chege for the plaintiff/applicant.

Mr.Olaly Cheche present for the defendants/respondents

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU