

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 998 OF 2012

DAVID BANDICH.....PLAINTIFF/RESPONDENT

VERSUS

JOEL TIROP BUSIENEL.....DEFENDANT/APPLICANT

RULING

The defendant prays for orders that this Honourable Court be pleased to issue interim orders of injunction to plaintiff/respondent from dealing with disputed land parcel number Nandi/Kamoiywo/1114 until payment is done as per an order to refund purchase price of Kshs.550,000 (Kenya Shillings Five Hundred and Fifty thousand Only) plus interest therein until it is fully paid and the same to apply to his agents, legal representatives and servants not to dispose off the said land parcel transfer, lease or mortgage bending the inter-party hearing and determination of this application. That the costs of this application be provided.

The application is based on grounds that the respondent/plaintiff has defaulted orders issued on 10.7.2014 that the respondent to refund the applicant Kshs. 550,000 (Five Hundred and Fifty Thousand Shillings Only) plus interest until full payment. That the plaintiff/respondent has refused, neglected or ignored to comply with this Honourable court order despite being asked to do so by the defendant/applicant and the same has indicated that he is not capable of refunding the said money therefore this court should order the plaintiff to surrender the disputed land parcel equivalent to the said money.

That the plaintiff/respondent has made the application at the Land Control Board with intention to transfer the disputed land parcel before refunding the purchase money which if it is not stopped will be prejudicial to the defendant/applicant. The respondent is trying to dispose off the disputed land before the applicant is paid his purchasing price which was ordered by this court.

I have considered the application, supporting affidavit and do find that this court reached its decision on 10.7.2014. Application for review was dismissed on 5.5.2015. There is no pending appeal. The parties herein can only extract the decree and execute the same. The court is ***functus officio***. Litigation has to come to an end. The application is dismissed with costs.

Dated and Delivered at Eldoret this 12th April, 2019.

ANTONY OMBWAYO

JUDGE