



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

CIVIL CASE NO. 146 OF 2017

ARIEL MUTEGI MBAE.....PLAINTIFF

VERSUS

BENSON KAIRIGO M'MWAMBA1ST DEFENDANT

CHARLES KIAMBI BENSON.....2ND DEFENDANT

R U L I N G

1. The Notice of Motion dated 3rd May, 2017 seeks the following orders:-

1) Spent.

2) That temporary injunction do issue restraining the Defendant's by themselves, agents, servants or any person acting under their direction of behest or any of them from selling disposing, charging, letting and/or dealing with Title Number ABOTHUGUCHI/ GAITU/666 until the hearing and determination of this application.

3) That an order do issue to the Land Registrar to place an inhibition on the suit property pending the hearing and determination of this application.

4) That temporary injunction do issue restraining the Respondent by themselves, agents, servants or any person acting under their direction or behest or any of them from selling, disposing, charging, letting and/or dealing with Title Number ABOTHUGUCHI/GAITU/666 until the hearing and determination of this suit.

5) THAT any other or further orders in the interest of justice do issue.

6) That the cost of this application be provided for.

2. Applicant avers that on 26:08:15, he entered into a land Sale Agreement with Defendants in respect of Parcel No. Abothuguchi/Gaitu/666. He paid the entire purchase price of Sh. 635,000 but the Defendants have failed to comply with the terms of the agreement.

3. Applicant is apprehensive that Respondents may dispose off the suit Land hence the prayer for injunction and inhibition.

4. In support of the application, applicant has availed copies of the agreement, a search certificate and copies of bank statements.

5. 1ST Respondent denies having any dealings with the applicant. He also states that the Suitland is utilized by his son one Morris Mwenda.
6. The Second Respondent also denies having sold the Suitland to Applicant but states that the only land he had sold to applicant is Parcel No. Kiamuri A /1423.
7. ON 10:10:15, directions were given for the application to be canvassed by way of Written Submissions. Such Submissions have been filed and exchanged.
8. The applicant has framed 4 issues for determination:-
- i. Whether the applicant took a loan of Sh. 430,000 from the employer.
 - ii. Whether 2nd Defendant received a sum of Sh. 855, 000 from Applicant.
 - iii. Whether the Applicant and Respondent entered in a Sale Agreement on 26: 08:15.
 - iv. Whether the Applicant has demonstrated that he has a prima facie case with probability of Success.
9. This is a case whereby the Respondents have denounced the Sale Agreement. Annexure AMM1, the Agreement for Sale is the bases upon which Plaintiff's claim is made. That document is only signed by the Applicant.
10. As submitted by the Respondent, the sale agreement is invalid by virtue of the law; see Section 3 (3) of the law of contract act.
11. The Applicant therefore needs to adduce further evidence to support his claim. As at now, Applicant has not demonstrated that he has a beneficial interest over the Suitland.
12. As rightly submitted by the Applicant, the Court cannot re-write contracts for the parties. In ***Patricia Bini vs Melina Investment Ltd & 3 Others 2015 e KLR*** Justice Angote stated thus :-**"It is trite law that Courts cannot re-write contracts for the parties neither can they imply terms that were not part of the contract...."**
13. I find that Applicant has not established a *prima facie case* with a probability of success.
14. Applicant has also not demonstrated that he stands to suffer irreparable damages if the injunction is not quashed.
15. And finally Applicant has not indicated that he is in occupation of the land hence the balance of convenience does not tilt in his favour.
16. **The Application of 03:05:17 is hereby dismissed with costs to the Respondent.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 24rd JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Otieno C. H/B for Mwamuye for Plaintiff present

Munene H/B for E.G Mwangi for defendant present

HON. L. N. MBUGUA

ELC JUDGE