



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.378 OF 2017

CHRISTOPHER KIPLANGAT TERER.....APPLICANT

VERSUS

ESTHER ROTICH.....RESPONDENT

RULING

(Application for injunction; plaintiff having an agreement with the defendant for purchase of the suit land; plaintiff having performed his part of the bargain; defendant unilaterally cancelling the agreement and informing the plaintiff that she has sold the land to a 3rd party; parties bound by their agreements; prima facie case established; orders of injunction issued to preserve the property pending hearing of the suit)

1. This suit was commenced by way of a plaint which was filed on 11 October 2017, and alongside the plaint, the plaintiff filed an application for injunction, seeking to restrain the defendant from the land parcel Nakuru/Tinet/Sotik Settlement Scheme/2185 which is the subject matter of this suit. Despite being served, the defendant has so far not entered any appearance to the suit and did not file anything to oppose the application for injunction. The only material that I have is therefore only that provided by the plaintiff.

2. It is the plaintiff's case that through a sale agreement entered into on 26 May 2017, the defendant agreed to sell to the plaintiff the land parcel Nakuru/Tinet/Sotik Settlement Scheme/2185 (hereinafter referred to as "the suit land") for a consideration of Kshs. 1,500,000/=. The plaintiff has averred that he deposited the sum of Kshs. 700,000/= on execution of the agreement and the balance of the purchase was to be paid on or before 30 November 2017. He has thus contended that he has complied with the terms of the agreement. However, on 26 September 2017, the defendant called the plaintiff and asked him to collect his money, claiming that she has sold the property to another person. It is the argument of the plaintiff that this action by the defendant is in breach of the sale agreement. In the suit, the plaintiff has sought orders of a declaration that he has performed his part of the agreement, an order to compel the defendant to sign the transfer documents, and an order of permanent injunction to restrain the defendant from any further dealings over the suit land.

3. In the application for injunction, the plaintiff has sought orders to have the defendant restrained from carrying out any transactions over the suit land until this case is heard and finalized. To her supporting affidavit, the plaintiff has annexed a copy of the sale agreement that she has with the defendant and I have taken note of the same.

4. As I have mentioned before, the defendant has not filed anything to oppose the motion. From the annexed sale agreement, I can see that on 26 May 2017, the defendant agreed to sell to the plaintiff the

suit land at a consideration of Kshs. 1,500,000/=. I have also seen from the agreement that a sum of Kshs. 700,000/= was paid on execution of the agreement and the balance of Kshs. 800,000/= was to be paid not later than 30 November 2017. The defendant has not explained why she has opted to sell the property to another purchaser yet I have not seen anything that would suggest that the plaintiff has breached his part of the bargain. It need not be emphasized that parties are bound by their agreements.

5. I am of the view that the plaintiff has established a prima facie case with a probability of success. If the defendant is allowed to dispose off the land to another person, then the plaintiff stands to suffer irreparable loss. In the premises, I do allow the application for injunction and make the following orders :-

(1) *The defendant* is hereby restrained by an order of injunction from offering for sale, selling, charging, leasing, or in any other way enter into any dealings or transactions over the land parcel Nku/Tinet/Sotik Settlement Scheme/2185 until this case is heard and determined.

(2) There is hereby issued an order of inhibition, inhibiting the registration of any disposition in the register of the land parcel Nku/Tinet/Sotik Settlement Scheme/2185, until this case is determined or until further orders of this court.

(3) The plaintiff shall have the costs of this application.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 23rd day of January 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Ngetich instructed by M/s Mitey & Associates advocates for the plaintiff/applicant.

No appearance on the part of the defendant.

Court Assistant: Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU