



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 176 OF 2017

JOSEPH PKERKER NGOLEPUS.....PLAINTIFF

VERSUS

WILSON LONAPA.....DEFENDANT

R U L I N G

1. The plaintiff filed the application dated 9/11/2017 seeking an order of temporary injunction to restrain the defendant from taking over and collecting rent or in any other way interfering with the plaintiff's tenants at **Plot No. D3 Makutano** Town within West Pokot County pending the hearing and determination of this suit. He claims to own the suit land which comprises of business rental houses which land he intended to sell to the defendant, who has now refused to pay the entire agreed consideration despite the lapse of time within which he should have paid it.

2. It is alleged that the defendant was to take possession upon completion of the consideration but he has now asked the tenants to be paying rent to him without the plaintiff having permitted him to do so. This is said to be in contravention of the agreement. It is also alleged that the defendant has fraudulently changed the ownership records and so the plaintiff stands to lose the suit property.

3. The defendant has opposed the application. He filed his sworn affidavit dated 9/1/2018 on 12/1/2018. He avers that he has no debt outstanding in respect of the sale of the suit property. He gives an outline of how he has effected payments in his affidavit. He also attaches evidence of payment.

4. I have looked at the agreement for sale of the suit land. It provides for damages for breach while the plaintiff seeks rescission of the contract. Rescission may well be a remedy for any contract of sale where appropriate, but in this case the first stop is the remedy of damages provided for. It appears that the plaintiff is unhappy with the taking of possession but I cannot take lightly the averments in the replying affidavit with regard to the additional payments made on 27/4/2017, and 8/5/2017. I also cannot fail to notice that the plaintiff has taken the greater portion of the purchase price in respect of the suit land.

5. Further if the defendant has taken over the plot in breach, which may be proved at the hearing, I do not find that the plaintiff would suffer any irreparable injury that cannot be compensated for by way of damages if the orders sought herein do not issue for the sole reason that he had decided to sell the plot in the first place anyway. It may be more of a mathematical issue between the two parties.

6. Consequently, I find that the plaintiff has failed to prove that he has a prima facie case with probability of success or that he would suffer irreparable injury if the orders do not issue. I therefore dismiss the application dated 9/11/2017 with costs to the defendant.

Dated, signed and delivered at Kitale on this 26th day of March, 2018.

MWANGI NJOROGE

JUDGE

26/3/2017

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant – Picoty

N/A for the parties

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

26/3/2018