

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA

LAND CASE NO. 184 OF 2016

DANIEL OMWAHAKA OYOMBE.....PLAINTIFF / APPLICANT

VERSUS

NATHAN KIPRONO MUTAI.....DEFENDANT/ RESPONDENT

RULING

The application is dated 20th September 2016 and is brought by way of Notice of Motion under order 40 Rule 1, 2, 4 of the Civil Procedure Rules and Section 3, 3A and 63(C) of the Civil Procedure Act. The Applicant seeks the following orders;

1. That this application be certified as urgent and its service be dispensed with in the first instance.
2. That the Honourable Court be pleased to issue an interim injunction against the defendant their agents, servants and or employees from transferring and or otherwise interfering in whatsoever way with the Plaintiffs property land parcel No. 347 Trans Nzoa District pending the hearing and determination of this application.
3. That the Honourable Court be pleased to issue an order restraining the defendant whether by themselves, agents, servants and or employees from trespassing, advertising for sale, selling, transferring, charge or dealing in whatsoever manner with the property known as parcel No. 347 Trans Nzoa District.
4. That there be such other and or further orders as the Honourable Court may deem as expedient in the circumstances to grant.
5. That the cost of this application be provided for.

The Plaintiff/ Applicant submitted that the plaintiff entered into an agreement with the Defendant sometime in 2004 to purchase land parcel number 382 Trans Nzoia District measuring 1 acre at a price of Kshs. 115,000/=. He paid in full but the defendant failed to deliver possession.

On or about 31st October 2016 the Plaintiff entered into another agreement with the Defendant to replace the first parcel with land parcel number 347 – Zea Settlement Scheme measuring 1 acre at the price Kshs. 115,000/=. However the Defendant has still not delivered vacant possession.

The Court has perused the application and supporting affidavit of the Plaintiff together with the annexures. The Defendant was served but failed to attend court or file any opposition. It is the plaintiff's contention that he first bought land parcel number 382 Trans Nzoia District and then replaced it with land parcel number 347 – Zea Settlement Scheme. The documents annexed to the application state the same. There is no evidence of purchase of land parcel No. 347 Trans Nzoa District as prayed for in the application and no evidence of its existence. There is also no plaint on record. Be that as it may, prayer 2 of the application has been spent and prayer 3 cannot be granted for the above reasons. The Applicant has failed to establish a prima facie case. This application has no merit and is hereby dismissed.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28TH FEBRUARY 2017.

N.A. MATHEKA

JUDGE