



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

MISC. APPL. NO. 4 OF 2017

DANIEL KATEI NDWIKOAPPLICANT

VERSUS

J.C.C. MINISTRY INTERNATIONAL (*sued*)

***through its trustee* RODGERS MUCHOLWA SILALI)....RESPONDENT**

RULING

1. The Application dated 20th December, 2016 is seeking for the following orders:

a. That the Honourable Court does grant a temporary injunction against the Respondent, their invitees, servants, employees and/or agents forbidding them from possessing, interfering with, entering into, alienating, selling, transferring, assigning and/or transferring or in any way dealing with the property registered as Mavoko Town Block 64 (Gimu)/541 pending the hearing and determination of the Originating Summons filed herewith.

b. That the costs of this Application be in the cause.

2. The Application is based on the grounds that the Applicant is the registered proprietor of the suit land; that the Applicant entered into a contract for the sale of the suit land with the Respondent for Kshs. 3,000,000 and that the Respondent paid to the Applicant a deposit of Kshs. 500,000.

3. According to the Applicant, the Respondent has declined to pay him the balance of the purchase price of Kshs. 2,500,000 and that despite invoking the completion clause in the sale agreement and serving the Respondent with a completion notice, the Respondent has refused to comply with the said notice.

4. In response, the Respondent filed a Notice of Preliminary Objection and a Replying Affidavit in which it averred that the suit is premature because the Plaintiff has not handed over the completion documents.

5. According to the Respondent, the suit offends the provisions of Section 3(3) of the Law of Contract Act and that the alleged undertaking was lifted by the Plaintiff.

6. The Plaintiff and the Defendant filed their respective submissions and authorities which I have considered.

7. In the Originating Summons dated 20th December, 2016, the Plaintiff is seeking for a declaration that the Respondent has breached the terms of the contract of sale and that the said contract for sale has been rescinded. The Plaintiff is also seeking for liquidated damages at 10% of the purchase price and *mesne*

profits from the day the Respondent took possession of the suit land.

8. In the meantime, the Plaintiff is seeking for an order of injunction, which will in effect have the Respondent evicted from the suit land.

9. The sale agreement that the Plaintiff is relying on shows that the balance of the purchase price that the Respondent was to pay to the Plaintiff was to be paid on or before the completion date, which was thirty (30) days from the date of acquiring the Title Deed for plot number 845.

10. The agreement further provided that on or before the completion date, the Plaintiff was to hand over the original Title document, the duly executed Transfer document, the consent of the Land Control Board and all documents relating to the suit land.

11. Despite the Plaintiff's advocates informing the Defendant to give a professional undertaking for the balance of the purchase price to enable the Plaintiff release the original documents for registration purpose, the Defendant seems not to have done so.

12. Although the Plaintiff is entitled to rescind the agreement by issuing a twenty one (21) days' notice to the Defendant for failure to comply with its obligations, the Plaintiff is required under Clause 8(a) of the Agreement to refund to the Defendant all the monies paid, including the 10% deposit.

13. The Plaintiff has not adduced any evidence to show that he has refunded to the Defendant the monies that has been paid to him.

14. Considering that the Plaintiff is, in addition to rescinding the agreement, praying for the payment of damages, including *mesne profits*, the Plaintiff will not suffer irreparable loss that cannot be compensated by way of damages if the injunctive order is not given.

15. For those reasons, I dismiss the Application dated 20th December, 2016 with costs

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O. A. ANGOTE

JUDGE