



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 127 OF 2017**

**FORMERLY NAKURU ELC CAUSE NO. 297 OF 2015**

**JAMES KAMAKE KARIA.....PLAINTIFF**

**-VERSUS-**

**KASHU OLE PERE.....DEFENDANT**

**RULING**

The Application before me was brought by way of Notice of Motion dated 21<sup>st</sup> October, 2015 in which the Applicant seeks various mandatory orders of injunction against the Respondent from selling, leasing off, ploughing, cultivating or in any way interfering with parcel of land known as **MARA/ OLOLULUNGA /1221**.

The Application was based on the grounds that the Respondent had sold the suit land to the Applicant for a consideration of kshs. 715,000/- but the Respondent has refused to give vacant possession and has declined to refund the purchase price. The Applicant further states that the Respondent was charged with a Criminal Case but acquitted because the matter was decided to be Civil in nature by the trial court.

The Applicant states that he is deeply unconvinced by the Respondent's action to renege on the Agreement of sale.

The Application was further supported by the Affidavit of the Applicant which was filed with the Application before me. In the said Affidavit the Applicant basically expounds on the contents of the grounds on the face of the Application.

The Applicant has annexed to the Supporting Affidavit a copy of Sale Agreement, a form for consent to transfer the land and Judgment in **SRMCC NAROK CRIMINAL CASE NO. 238 OF 2011** which are related to that parcel of land known as **CIS MARA/ OLOLULUNGA/1221**.

The Applicant avers that upon purchase of the land the Respondent has refused to grant him vacant possession of the same and despite interventions by the witnesses to the Agreement, the Respondent declined effect the transfer which made the Applicant lodge a caution on the title and file a Criminal complaint against the Respondent.

The Respondent opposed the said Application and filed a Replying Affidavit in which the Respondent admits only to have sold to the Applicant only 3acres and not 14 acres as alleged. The Respondent also avers that he did not receive the sum of kshs. 715,000 as consideration for the 11 extra acres. The Respondent also denies applying for consent to transfer the land and even giving an undertaking the surrender vacant possession.

When the matter first came up for hearing Munyao Judge in Nakuru on 14<sup>th</sup> November, 2016 the parties agreed to dispose of the Application by way of written submission, however, the said submissions were only filed on 31<sup>st</sup> May, 2017 by both parties.

I have read the Application together with the annexures thereon and the Replying Affidavit in opposition thereto and the submissions filed and the issue for determination before me as follows:-

**1. Whether there was indeed a sale of land between the Applicant and Respondent**

**2. Whether the Applicant has satisfied the grounds for the granting of the orders sought.**

In answering the first question. It is not disputed that there was an agreement for sale of land between the Applicant and the Respondent, however, the contention is about what acreage and or size that sold and/or purchased and this is an issue which can only be determined at a full trial where evidence will be adduced.

As with respect to the second question the grounds for granting an interlocutory injunction are now well settled as stated in case of **GIELLA –VERSUS- CASSMAN BROWN LTD(1973)EA 358** which I will not belabour to explain.

The Applicant has annexed to his Application Sale Agreement which the Respondent has not disputed as being between him and the Applicant but says he only sold 3 acres and not 11 acres.

From the material placed before I am satisfied that the Applicant has established a prima facie case. The Respondent has adduced Preliminary evidence to justify his continued occupation of the suit land. Am also satisfied that unless the orders sought are granted the Applicant will suffer irreparable loss and damage.

The upshot of the foregoing is that I will allow the Plaintiff's Notice of Motion dated 21<sup>st</sup> October, 2015 in terms of prayers 2, 4 and 5 thereof. The plaintiff will have the cost of the Application.

**Dated, Signed and Delivered** in open court at **NAROK** on this **31<sup>st</sup>** day of **July, 2017**

**Mohammed Noor Kullow**

**Judge**

**31/7/17**

In the presence of:-

Ms Nchoe holding brief for Ms Ogur for the plaintiff

Ms Makori for the Defendant

CA:Evans