

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 21 OF 2016

JOSHUA KIPROP KISORIO..... PLAINTIFF

VERSUS

JULIUS KISORIO.....1ST DEFENDANT

JOHN KIBEREN KISORIO.....2ND DEFENDANT

RULING

There are two applications on record in this matter, one dated 13.7.2016 and 25.7.2016. In the application dated 13.7.2016, the defendants pray that the plaintiff be restrained from collection of rent of property No. **Nandi/Kaigat Township/18**. The application is grounded on the fact that the defendant is the registered owner of the property and has been in possession since September, 2014. The second application is dated 25.7.2016, wherein the plaintiff prays that the defendants be restrained from evicting or threatening to evict him and his tenants from property known as Nandi/Kaigat Township/18, pending the hearing land determination of the suit.

In a nutshell, the plaintiff claims that he bought the suit property from one Elizabeth Kessio at a consideration of Kshs.1,500,000. He took possession and bought his mother an electric *posho* mill. The 1st defendant showed interest in purchasing the property and therefore, being his elder brother whom he trusted, they agreed that he would pay Kshs.750,000 being 50% of the property and the balance was to be paid within 90 days. They agreed that the 1st defendant takes possession on payment of 80% of the consideration. On payment of 80% of the consideration, the plaintiff instructed Elizabeth Kessio to execute the transfer directly to the 1st defendant. However, the 1st defendant has not paid the balance of Kshs.750,000.00 more than three years down the lane. The defendants now threaten to evict the plaintiff's tenants from the suit parcel of land and has directed the rent to be paid to the defendants.

The 2nd defendant claims to be the registered owner of Nandi/Kaigat Township/18 measuring 0.11 acres. He purchased the land from the plaintiff in June, 2014. He took possession of the previous situate on Nandi/Kaigat Township/18 in September, 2014 and commenced collecting rent. He claims that the purchase price was Kshs.750,000.00 and not Kshs.1,500,000.00.

I have considered both applications and do find that they revolve on ownership of the suit parcel and whether the defendant has fully paid the purchase price. This issue can only be determined at the conclusion of the case. I do find that it is necessary to hear parties and their witnesses to establish whether the plaintiff has paid the full purchase price and therefore, both application can only be determined on a balance of convenience.

The balance of convenience tilts towards allowing the plaintiff's application dated 25.7.2016 and therefore, the plaintiff and defendants are restrained either by themselves and or agents from evicting or threatening to evict the tenants from the suit premises. In other words, both parties are restrained from interfering with the suit premises until hearing and determination of the suit. Moreover, the County Land Registrar, Nandi is restrained from dealing with the suit property in any manner whatsoever, until the hearing of the suit. In the meantime, counsel for both parties to open a joint account in a reputable bank and tenants in respect of parcel of land No. Nandi/Kaigat Township/18 to pay rent in that account. All tenants to be notified of the account number. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 28TH DAY OF SEPTEMBER, 2017.

A. OMBWAYO

JUDGE