

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 654 OF 2016

KINGDOM CAPITAL AFRICA LIMITED.....PLAINTIFF

VERSUS

INTRA AFRICA ASSURANCE LIMITED.....DEFENDANT

RULING

The Plaintiff through the application dated 21/7/2016 seeks to have the court issue a mandatory injunction to compel the Defendant to complete the sale transaction of the agreement dated 13/4/2010 within 14 days. If the Defendant does not comply, the Plaintiff seeks a vesting order in respect of L.R. No. 8784/10 (Original Number 8784/2/7 and L.R. No. 8784/11 (Original number 8784/2/8) (“the Suit Properties”). The Plaintiff also seeks a temporary injunction to restrain the Defendant from breaching or continuing to breach the agreement dated 13/4/2010 and to restrain it from transferring or dealing with the Suit Properties.

The application is support by the affidavit of the Plaintiff’s Director, Gerald Macharia Maina. The application is made on the ground that this is a clear case where the Plaintiff seeks specific performance of a valid and legally binding agreement. The Plaintiffs complaint is that the Defendant has neglected to complete the sale transaction over the Suit Property and that there is no need for waiting for a full hearing of the suit. The Plaintiff maintains that it has fulfilled its obligations under the agreement and is prepared to pay the balance of purchase price. The Plaintiff annexed a copy of the sale agreement that it entered into with the Defendant for the sale of the Suit Properties. The agreement states that the purchase price for the Suit Properties was Kshs. 50 million out of which 30 million was payable on execution of the agreement while the balance would either be paid on the completion date or upon registration of the transfer. The agreement gave the completion date as being 30 days from the date of the agreement or such other date as parties may agree in writing. The Plaintiff also annexed copies of the correspondence exchanged on the matter. Despite the reminders and promises to complete the transaction the Defendant failed to honour its obligations. No evidence was placed before the court to show that the 30 Million shillings being 60% of the purchase price was paid by the Plaintiff. The Defendant was served but it did not file any document.

It is just and meet to restrain dealings with the Suit Property pending hearing and determination of this suit. The court is not satisfied that a mandatory injunction ought to issue and directs the Plaintiff to set down the suit for hearing. The Plaintiff will have the costs of this application.

Dated and delivered at Nairobi this 21st day of September 2017.

K. BOR

JUDGE

In the presence of: -

Mr Macharia for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant