



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 1298 OF 2016

JACK MATHENGE GITURWA.....1ST PLAINTIFF/APPLICANT

MARY MAKUNGU OKANGA.....2ND PLAINTIFF/APPLICANT

-VERSUS-

CITIMARK INVESTMENT LIMITED.....DEFENDANT/RESPONDENT

RULING.

1. The plaintiffs/applicants filed a Notice of Motion dated **21st October 2016**, in which they sought the following reliefs;-

1. Spent

2. Spent

3. That pending the hearing and determination of the main suit, this Honourable court be pleased to restrain the defendants/respondent by itself, its servants, agents or whomsoever in any means howsoever from continuing fencing, sub-dividing, placing new beacons, constructing ,trespassing, encroaching, alienating and/or disposing of and in any way interfering with parcel of land being title No.Donyo Sabuk/Komarock Block 1/28136.

4. That the OCS K.B.C Police Station do oversee the enforcement of court orders issued.

5. That costs of this application be provided.

2. The applicants purchased LR No. Donyo Sabuk/Komarock Block 1/28136 (suitland) on 23rd June 2016. After obtaining the necessary consents, the suitland was transferred to them and a title deed issued on 2nd September 2016, when the applicants wanted to develop the suitland, they found that the respondent had moved into the suitland, started fencing the land and subdividing the same. This is what prompted the applicants to move to court seeking injunctive reliefs against the trespass to the suitland by the respondent.

3. The respondent through its Director Hassan Nyamai Musa swore an affidavit on 23rd January 2017 in which he states that on 10th March 2015, the respondent entered into a sale agreement with the administrators of the estate of the late Mwangangi Muvu Nganga for the purchase of the suitland. The respondent made a down payment of Kshs.704,000/=upon execution of the agreement. The respondent

later made a further payment of Kshs.2,000,000/= on diverse dates. The agreed purchase price was Kshs.7,040,000/=.

4. The balance of the purchase price was not paid in accordance with the agreement. The vendors issued a completion Notice which the respondent did not comply with. The respondent contends that the vendors were not entitled to rescind the agreement and resell the suitland. The respondent further contends that it made efforts to get the vendors' account so as to complete payment in vain.

5. I have considered the applicants' application as well as the opposition thereto by the respondent. I have also considered the submissions filed in this matter. This being an application for injunction, the only issue for determination is whether the applicants have met the threshold for grant of the same. The principles for grant of temporary injunction were well set out in the case of **Giella Vs Cassman Brown (1973) EA 358** which has subsequently been quoted with approval in a number of cases. *Firstly, an applicant has to demonstrate that he has a prima facie case. Secondly an injunction will not normally be granted unless the applicant will suffer loss which will not be compensated in damages.* If the court is in doubt, it will decide the application on a balance of convenience.

6. In the instant case, the applicants have demonstrated that they purchased the suitland for valuable consideration. They paid the entire purchase price after which they were issued with a title deed. The respondent had intended to purchase the suitland. The respondent made part payment but did not complete paying the agreed purchase price. The respondent concedes that the vendors issued a completion notice which he did not comply with. It is therefore clear that the applicant have demonstrated that they have a strong case against the respondents. The respondent is contending that completion of the transaction was contingent upon the vendors obtaining a confirmed grant in respect of the estate of the deceased. I have looked at the agreement between the respondent and the vendors and see no such clause.

7. A prima facie case is the cornerstone of grant of temporary injunction. There is no need to consider whether damages will be an adequate remedy. This is land which the applicants purchased and one cannot invade it and claim that since damages may be adequate, he can keep the land. No two parcels of land may be the same. I am not in any doubt as to consider the principle of balance convenience. As the applicants have demonstrated that they have a prima facie case, I allow the application in terms of prayers 3,4, and 5.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **17th** day of **October, 2017**.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of ruling.

Court Assistant: Steve

E.O.OBAGA

JUDGE