

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 346 OF 2015

MARY CHELIMO KOGO.....PLAINTIFF

VERSUS

SALLY MWEMBU MANYARA.....DEFENDANT

RULING

The application herein is dated 31.8.2015 and filed on the same date. The plaintiff prays that the defendant by herself, her agents, servants representatives or any other person claiming under her or whosoever be restrained by way of injunction from selling disposing off, alienating taking possession, developing, encroaching upon and/or trespassing on the property L. R. No. Uasin Gishu/El-Lare/67 measuring 0.1 of an acre pending the hearing of this application interpartes and thereafter pending the hearing and determination of this suit.

The application is based on grounds that the defendant has instructed her Advocate to illegally rescind a contract of sale for land parcel Uasin Gishu El-Lare/67 without notice as provided under section 41 of the land Act. The defendant is in the process of selling the property to a 3rd party when there is a valid agreement. The defendant is acting maliciously by offering land for sale at higher price to a 3rd party. The application is brought in utmost good faith and is intended to make the ends of justice meet. The applicant has good case with high chances of success.

The application is supported by the affidavit of ***Mary Chelimo Kogo*** the plaintiff herein who states that on 24th of March, 2015, she entered into a sale agreement together with improvement thereon where she purchased 0.1 acre of land being part of ***Uasin Gishu/El-Lare/67*** at agreed total consideration of Kshs.1,270,000/=. That she paid Kshs.500,000/= to the respondent upon signing the agreement and a further Kshs.320,000/= on 2nd June, 2015 and thereafter took possession of the property immediately she paid the first deposit as provided for under clause 6 of the agreement.

That pursuant to paragraph 4 above, she carried out some fencing work and some other repairs to premises of which the respondent had given her keys. That she was expecting to pay the balance of Kshs.450,000/= from a bank loan which she had applied from National Bank which fact she had communicated to the respondent. That the said bank loan delayed in being processed and she received the same on 28th August, 2015.

That pursuant to paragraph 7 above and prior to her loan being processed, she received a letter from the Advocate of the respondent cancelling the sale agreement. That she was not served with any notice as provided for under section 41 of the land act 2012 or at all. That she has learnt that the respondent is in the process of selling the land to a 3rd party and has asked her to pick Kshs.319,000/= from all the money she paid being Kshs.820,000/=. That the respondent is acting arbitrary and without regard to the law and the agreement of sale. That clause 7 of the agreement of sale proves for damages in case of default at 30%, that clause does not provide for rescinding of the contract in case of late payment. That the breach on her side can be remedied and after all the agreement provides for compensation in case of breach, and she is ready to conclude the sale. The application is unopposed.

I have looked at the sale agreement and do find that the plaintiff has paid a substantial amount of money in fulfillment of the agreement and took possession of the property and fenced the same and do find that she has established a prima facie case with a likelihood of success. I also find that if temporary injunction is not granted, the land may be sold hence causing irreparable loss to the plaintiff. The upshot

of the above is that the application is allowed. Costs in the cause.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF OCTOBER, 2015.

ANTONY OMBWAYO

JUDGE