



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L 140 OF 2014**

**AUGUSTINE ARAP KOGO.....PLAINTIFF**

**VS**

**JOSEPHAT NYAGA MACHARIA.....1ST DEFENDANT FAITH  
MWIHAKI KARIUKI.....2ND DEFENDANT**

*(Application for injunction; principles to be applied; plaintiff having entered into a land sale agreement with defendants; defendants having made a deposit but not paying the balance; defendants being on the suit land; whether plaintiff is deserving of an injunction in the circumstances; application allowed)*

**RULING**

This suit was commenced vide a plaint filed on 6 May 2014. It is the plaintiff's case that on 5 September 2013, he entered into a sale agreement with the defendants, wherein the plaintiff sold to the defendants the land parcel known as Eldoret Municipality Block 4 Phase 1/666 measuring 1/8th of an acre for a consideration of Kshs. 300,000/=. It is averred that the defendants only paid Kshs. 100,000/= and neglected to pay the balance of Kshs. 200,000/= therefore repudiating the agreement. Following this breach, the plaintiff refunded the defendants their Kshs. 100,000/=. Despite not having fully paid for the land, the defendants moved into the land and commenced developments. Through this suit, the plaintiff wants orders to have the defendant permanently restrained from the suit land and for a declaration that the sale agreement of 5 September 2013 is null and void for breach by the defendants.

Simultaneously with the plaint, the plaintiff filed an application for injunction dated 5 May 2014, and it is that application for injunction which is the subject of this ruling. In the supporting affidavit to the application, the plaintiff has annexed copies of the agreement of 5 September 2013, a demand letter for the balance, a banker's cheque for Kshs. 100,000/=: which is said to be a refund of the part purchase price, and a photograph of the suit land.

Despite being served with summons and the application herein, the defendants have not filed any response. This application is therefore unopposed by the defendants. However, that does not mean that I have to automatically allow the application. This being an application for injunction, I need to be satisfied that the applicant has met the test set out in the case of *Giella v Cassman Brown (1973) EA 358*. In the said case, it was stated that when faced with an application for injunction, the court needs to be convinced that the applicant has laid down a prima facie case with a probability of success; be alive to the tenet that an injunction will not normally be granted unless damages will be an inadequate remedy; and finally, if in doubt, decide the application on a balance of convenience.

In this instance, I have seen the agreement of the parties. The agreement is dated 5 September 2013 between the plaintiff as vendor, and the defendants as purchasers. The purchase price is Kshs. 300,000/=: and in the agreement, it is stated that the purchasers have paid the vendor a sum of Kshs. 100,000/= on signing of the agreement. The balance of Kshs. 200,000/= was to be paid on or before 30 October 2013. In the agreement, the purchasers were allowed to take immediate possession of the land. The demand letter is dated 18 March 2014, and demands that the defendants do pay up the balance of Kshs. 200,000/= within 30 days, or else move out of the land.

From the foregoing, it is apparent that the defendants breached the sale agreement by not paying the balance of the purchase price within the stipulated period in the contract. There having been a breach, the plaintiff, from the material before me, had a right to treat the agreement as repudiated by the defendants. He cannot now be bound by that agreement if he opts out of it. The defendant has offered no reason why he should continue being on the land despite not having paid for it. In my view, from the material before me, the plaintiff has demonstrated a prima facie case with a probability of success. There is no doubt that he stands to suffer loss if the defendants continue being in possession and waste the land. The plaintiff is therefore deserving of an order of injunction against the defendants.

I allow this application and issue an order of injunction barring the defendants from being upon, remaining upon, entering, occupying, developing, or in any other way utilizing or dealing with the suit land Eldoret Municipality Block 4 Phase 1/ 666 pending the hearing and determination of this suit. The costs of the application shall be costs in the cause.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF JUNE 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

*Delivered in the presence of:*

*MISS J.J. Kiplagat holding brief for Mr. C.K. Keter for the plaintiff/applicant.*

*Mr. H.B. Kaino holding brief for M/s Mburu Maina for defendants.*