



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 18 OF 2014

**1. MNANG'AT STEPHEN PAMBA
2. SALOME CHEPKEMEI LOSIANGOLE PLAINTIFFS**

VERSUS

**1. JAMES MARIACH KOKITA
2. VERONICA C. AKOKOR DEFENDANTS**

RULING

1. The applicants filed a notice of motion dated 18/3/2014 seeking an order of injunction restraining the respondents either by themselves or through their agents, servants, employees, assignees, representatives or any person claiming through them from encroaching, trespassing, entering or in any manner whatsoever with the plaintiffs quiet possession or occupation and use of two acres forming part of LR. NO. West Pokot/Keringet "A"/4850 pending hearing and determination of this suit.
2. The respondents are husband and wife respectively. The second respondent is the registered owner of LR. NO. West Pokot/Keringet "A"/4050. On 28/12/2010, the applicants and the respondents entered into a sale agreement in which the respondents agreed to sell 2 acres to the applicants.
3. The applicant were put in possession of the two acres upon payment of the purchase price of Kshs. 800,000/=. The respondents now want to take back the land and have moved and ploughed the same.
4. The first respondent has opposed the applicants application based on grounds of opposition dated and filed in court on 4/4/2014. The first respondent contends that LR. No. West Pokot /Ker "A"/4050 is non existent and that an injunction should not be issued based on the non existent land. He also contends that the applicants have no prima facie case with probability of success.
5. The second respondent has opposed the application based on a replying affidavit sworn and filed in court on 7/4/2014. The second defendant contends that she is residing on LR. NO. West Pokot/Keringet "A" /4050 and does not know anything to do with LR NO. West Pokot/Ker "A" 4050. She further contends that she was forced to sign the sale agreement by the first respondent and the chief of Mnagei location.
6. I have carefully gone through the applicants application as well as the replying affidavit and grounds of opposition. I have also considered the submissions by Counsel for the parties herein. The issue which arises for determination is whether LR NO. West Pokot/Ker "A"/4050 exists and whether it is the same land known as West Pokot/Keringet "A"/4050. Secondly I have to determine whether obability of success.

7. The principles for grant of injunctions are now well settled. The classic *case of Giella -Vs- Cassman Brown Co. Ltd 1973 EA 358* stated the principles. The first principle is that an applicant should demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which might not be compensated by an award of damages. The third principle is that if the court is in doubt it will decide the application on a balance of convenience.
8. In the present case the respondents are contending that land known as West Pokot/Ker "A"/4050 or West Pokot/Ker "A" /4050 is non existent. I do not find any merit in this argument. The description of the land from which the applicants were purchasing the 2 acres was a shortened form of West Pokot/Keringet "A"/4050. It is clear that the sale agreement had been prepared and what happened was that the parties filled in a standard contract which had already been prepared. The space left for plot no was so small and could not accommodate the full description of the plot. I therefore find that plot described as West Pokot/Ker "A" 4050 or West Pokot/Ker "A"/4050 and West Pokot/Keringet "A"/4050 refer to the same plot which is registered in the name of the second respondent.
9. The applicants have demonstrated that they bought land from the respondent. They were paid the full purchase price and were put in possession of the property. They have also demonstrated that the respondents now want to *renege* on the agreement. There have been attempts to refund the purchase price. There are correspondence in the file which show that the respondents have changed their minds and that they do not want to give the two acres to the applicants. The applicant's have demonstrated that they have a prima facie case with probability of success. The second respondent's contention that she was forced to sign the sale agreement has no basis. I allow the application by the applicants in terms of prayer (2) of the application. The injunction should remain until conclusion of this case. The applicants shall also have costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of June, 2014.

E. OBAGA

JUDGE

In the presence of Mr Ingosi for applicant and Mr Nyakundi for 2nd respondent. Court Clerk –
Kassachoon.

E. OBAGA

JUDGE