



Mokaya v Singoey & another (Environment & Land Case E026 of 2024) [2024] KEELC 5311 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5311 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E026 OF 2024**

**EO OBAGA, J
JULY 18, 2024**

BETWEEN

ELICK AMWOMA MOKAYA PLAINTIFF

AND

REUBEN SILE SINGOEY 1ST DEFENDANT

LAND REGISTRAR, UASIN GISHU COUNTY 2ND DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 6.5.2024 in which the plaintiff/Applicant is seeking the following orders: -
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the suit herein this court be pleased to issue temporary injunction against the Defendants/Respondents, their agents, servants and /or any person claiming or acting on the Defendants/Respondent' instructions restraining them from issuing another title in respect of property known as Cheptiret/Cheplaskei Bock 2 (Chepkigen)/195 in the name of REUBEN SILE SINGOEY, transferring, charging, disposing off and/or in any manner dealing with the parcel of land known as Cheptiret/Cheplaskei Block 2 (Chepkigen)/195.
 - d. That the costs of this application be provided for.
2. The Applicant contends that he purchased LR. No. Cheptiret/ Cheplaskei Bock 2 (Chepkigen)/195 measuring 35.23 hectares from the 1st Defendant/Respondent at a consideration of Kshs 158, 280,000/= on 25.10.2019. He paid the full purchase price after which the Respondent gave him the original title to the suit property and spousal consent among other completion documents.



3. The Respondent has since declined to appear before the Land Control Board for consent of the board to transfer the suit property to him. The Applicant later learnt that the Respondent had gone to the Land Registrar where he claimed that the original title to the suit property was lost and that he wanted a replacement.
4. The Land Registrar went ahead to advertise in the Kenya Gazette Notice of his intention to issue a new title after expiry of 60 days. The Applicant therefore contends that if a new title is issued, the Respondent will go ahead to sell the suit property thus depriving him of his property which he purchased. It is on this basis that the Applicant seeks an injunction against the Defendants.
5. The 1st Respondent opposed the Applicant's application based on a replying affidavit sworn on 24.6.2024. The Respondent contends that the Applicant has not met the threshold for grant of an injunction in that he has not proved which of his legal rights has been breached as to call for grant of an injunction.
6. The Respondent contends that any issuance of an injunction will impede the legitimate powers of the Land Registrar which will be against the powers under section 33 of the *Land Registration Act*. The Respondent further contends that the application has been brought prematurely.
7. The Respondent further states that the Applicant's application is a fraudulent scheme to deprive him of his property which he has never sold to the Applicant or any other person. The Applicant further states that he deposited his original title in the firm of Rioba Omboto & Co. Advocates as security for repayment of money which he borrowed from Four Jays Agency Limited.
8. The Respondent states that he was advanced Kshs. 51,200,000/= by Four Jays Agency Limited which is owned by Josephat Nyakundi Omweri alias Bernard Momanyi Tochi. He gave the said amount to Mr. Omweri to purchase for him treasury bonds but he did not purchase the bonds for him. He states that he repaid Kshs. 15,000,000 out of the advanced money but he later stopped when he learned that Mr. Omweri did not carry out the assignment which he was given.
9. The Respondent states that the alleged purchase is a scheme hatched by the Applicant, Mr. Omweri and others to defraud him of his property. He never handed title to the Applicant and that it is ridiculous that the Applicant claims to have purchased the suit property for Kshs. 158,280,000 without any evidence of bank transfer for the colossal sum. He even wonders how the applicant would have paid him a sum of Kshs. 107,080,000 in cash on the date of the agreement.
10. I have considered the Applicant's application as well as the opposition to the same by the 1st Respondent. I have also considered the oral submissions by the parties. The only issue for determination is whether the Applicant has met the threshold for grant of an injunction.
11. The principles for grant of a temporary injunction was well set out in the case of *Giella Vs. Cassman Brown & Co. Ltd* (1973) EA 358. First an applicant has to demonstrate that he has a prima facie case with probability of success. Second, the Applicant must demonstrate that he will suffer loss which will not be compensated in damages. Third, if the court is in doubt, it will decide the application on a balance of convenience.
12. In the case of *Mrao Vs. First American Bank of Kenya Limited* (2003) eKLR a prima facie case was defined as follows;

“A prima facie case in Civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal property directing



itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

13. To begin with, an injunction is an equitable remedy and whoever desires the court to grant him the relief, he has to come to court with clean hands. In the instant case the Applicant is stating that he purchased the suit property at Kshs 158,280,000/= on 25.10.2019. Out of the purchase price, a sum of Kshs 107,080,000/= was allegedly paid in cash. The source of this colossal sum is not disclosed.
14. The mere fact that the Applicant has in possession original title to the suit property together with other completion documents is not demonstration of a prima facie case. The Applicant was under duty to demonstrate that indeed there was a genuine sale agreement and that he paid the money which he alleges to have paid. The Respondent in this replying affidavit has stated on how his original title ended up being given. The Applicant has not rebutted these averments. To this extent I do not see what prima facie case the Applicant has to warrant an injunction.
15. If it turns out that the Applicant purchased the suit property as he alleges, the value of the same is known and he will be compensated in damages. Courts of Law will not sanction what prima facie appears to have been illegal dealings between the parties herein. Even if the court were to consider the balance of convenience, the convenience tilts in favour of the 1st Respondent who has been in possession of the suit property for the last 5 years since the alleged purchase.
16. It is clear from the above analysis that the Applicant’s application is devoid of merit. The same is dismissed with costs to the 1st Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF JULY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mukhabane for Plaintiff.

Mr. Kenei for 1st Defendant/Respondent.

Court Assistant –Laban

E. O. OBAGA

JUDGE

18TH JULY, 2024

