



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 1516 OF 2016

RAHMA ALI SALIM.....PLAINTIFF

=VERSUS=

SAIFUDDIN FIDAALI HEBATULLAH.....DEFENDANT

RULING

BACKGROUND

1. The Plaintiff/Applicant entered into a sale agreement with the defendant/respondent for the purchase of LR No. 209/136/290 in Nairobi. The consideration was Kshs.18,000,000/=. The applicant paid Kshs.1,800,000/= being 10% of the purchase price before execution of the agreement. The balance was to be paid within 90 days from the date the agreement was signed.

APPLICANT'S APPLICATION.

2. The applicant filed a notice of motion dated 5th December 2016 in which he sought injunctive orders against the respondent. The applicant contends that he paid the entire purchase price as per the agreement but that the respondent has declined to provide completion documents to enable him have the property transferred into his name. He therefore seeks orders to restrain the respondent from dealing with the property in any manner until the suit filed is heard and determined.

RESPONDENT'S CONTENTION

3. The respondent has opposed the applicant's application based on a replying affidavit sworn on 13th February 2017. The respondent contends that the applicant's application is an abuse of the process of the court and that the applicant has not told the court the truth of the matter and is therefore not deserving of the orders. That the applicant has never completed paying the purchase price and if his documents are anything to go by, he has only paid Kshs.12,800,000/=.

ANALYSIS

4. I have gone through the applicant's application as well as the documents in support of the same. I have also gone through the opposition to the application as contained in the replying affidavit of the respondent. The submissions by the parties have also been considered. This being an application for

injunction, the applicant is expected to first and foremost demonstrate that he has a prima facie case with chances of success. In other words he has to meet the threshold set out in the celebrated case of **Giella Vs Cassman Brown & (1973) EA 358.**

5. In the applicant's statement of claim the applicant is seeking for injunctive orders and orders of specific performance. The parties herein had entered into an agreement on 1st of June 2013. The completion date was 90 days from the date of the agreement. The applicant contends that he paid the entire purchase price within the stipulated time.

6. A look at the schedule of payments made by the applicant attached to his affidavit shows that various amounts were paid to various persons and entities between 15th April 2014 to 30th December 2014. None of the payments was made to the respondent and if those payments were made with the authority of the respondent, the amount adds up to 12,800,000/=. If the deposit of 1,800,000/= paid is added, the total comes to 14,600,000/=. It is therefore clear that the applicant has not shown that he cleared the purchase price as alleged. The payments if any were made outside the completion date. I do not therefore see any prima facie case shown by the applicant.

7. An injunction is an equitable relief and whoever seeks it has to come to Court with clean hands. The applicant in this case has not demonstrated that he paid all that he was required to pay within the stipulated time. His claim that he has cleared paying the purchase price is therefore without basis.

CONCLUSION.

8. On the material presented by the applicant, I find that there is no prima facie case disclosed. Any damage which the applicant may suffer can be met in monetary terms. The applicant's application lacks merit. The same is hereby dismissed with costs to the respondent.

Dated, Signed and delivered at **Nairobi** on this **9th** day of **November 2017.**

E.O.OBAGA

JUDGE

In the presence of;-

M/s Motabori for Mr Wangila for Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE



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