



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO 2567 OF 1977

A. ASSANAND.....PLAINTIFF

VERSUS

R.W. PETTITT.....DEFENDANT

ORDER

May 3, 1978, **Harris J** delivered the following Order.

This is an application by the plaintiff for an injunction restraining the defendant, his servants or agents, from dealing with or alienating , whether by lease of twelve months or less or in any manner whatsoever certain leasehold premises in Nairobi, the subject matter of the suit, and also restraining them from removing from the said premises or dealing with or alienating certain articles of furniture in the premises.

In his plaint the plaintiff claims specific performance of an agreement dated 17th January 1977 between the parties relating to the premises damages for breach of contract and other relief.

The agreement is in the following terms:

“Heads of Agreement

“Sale of Mr R.W. Pettitt’s Residence Manyani Road East, Nairobi.

“It is agreed that Mr A. Assanand will purchase the above property, at a price of K£ 25,000.

“A deposit of K£ 2,500 becomes payable immediately upon the exchange of letters.

“Legal fees and other expenses to be dealt with on the customary basis as between Buyer and Seller.

“Occupancy date to be agreed”;

followed by the signatures of the parties.

The defence is to the effect that this document does not amount to a binding contract for sale, being merely an agreement to enter into an agreement, and that if there exists a binding contract for sale the suit is premature as the defendant is entitled to remain in possession until a date for delivery up of possession

is agreed.

The principles governing the granting of interlocutory injunctions in this country are to be found in the judgment of Spry V.P in the Court of Appeal in *EA Industries Ltd v Trufoods Ltd* [1972] EA 420, where at page 421 he said:

“There is, I think, no real difference of opinion as to the law regarding interlocutory injunctions, although it may be expressed in different ways. A plaintiff has to show a *prima facie* case with a probability of success, and if the Court is in doubt it will decide the application on the balance of convenience. An interlocutory injunction will not normally be granted unless the applicant for it might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.”

With this view the other members of the Court agreed.

I have carefully considered the submissions of Mr Khanna and the facts and authorities mentioned by him. I have also had regard to the fact that the heads of agreement do not fix a date for completion and that they provide that what is termed the “occupancy date” is itself to be agreed, presumably between the parties. I accept that where a date for completion is not stated the court may, in appropriate circumstances, supply it, but I know of no authority for the proposition that when the parties to such an agreement as we have here have expressly agreed that the date for possession is itself to be agreed between them the Court would step in and supply it. Counsel for the plaintiff conceded in argument that no “occupancy date” had been fixed either prior to or since the date of the agreement.

I express no view as to the ultimate outcome of this litigation but I am satisfied that the plaintiff has not shown a *prima facie* case with a probability of success. Furthermore I am not satisfied that he has shown that a refusal of the injunction sought would cause him to suffer irreparable injury which would not adequately be compensated by an award of damages.

The summons is therefore dismissed with costs.

May 3, 1978

HARRIS J