



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI**

**ELC SUIT NO. E035 OF 2021 [OS]**

**AVALANCHE INVESTMENT GROUP LTD.....APPLICANT**

**=VERSUS=**

**ADMINISTRATORS OF THE ESTATE OF JOHN MAKUTHI KATHUMBA.....RESPONDENT**

**RULING**

*(In respect of the Notice of Motion dated 27<sup>th</sup> August 2021 seeking an injunction pending the hearing of the main suit).*

**Background.**

1. The Plaintiff, Avalanche Investment Group Limited through its Notice of Motion Application dated 27<sup>th</sup> August 2021 prays for an order of injunction restraining the Defendants/Respondents from evicting, demolishing, excavating, chasing away the Applicant's security guards or in any manner interfering with the suit property pending the hearing of the main suit.
2. The Application is based on the grounds on the face of it and the supporting affidavit of Abdi Abdifatah Muhumed sworn 27<sup>th</sup> August 2021 and the supplementary affidavit sworn on the 18<sup>th</sup> November 2021 by the same deponent.
3. The Applicant claims to be the registered proprietor as lessee of the suit property Title No. 9092/1 registered as I.R 103055. The Applicant accuses the Respondents of interfering with the suit property despite the fact that they have no legal or equitable interest over it.
4. The Respondents oppose the application by the Plaintiff. The Respondents state that they are genuine squatters on the land known as L.R No. 7075/3 where they have been in occupation since 1953. The Respondents aver that their status as genuine squatters has been recognized by the National Land Commission and through its report dated 21<sup>st</sup> January 2019, the Commission indeed recommended that Kenya Airports Authority (KAA) compensates them to facilitate their resettlement. The Respondents are categorical that the Applicant has no title over L.R No. 9092/1 since the same was revoked.

**Court's Directions**

5. The court directed that the Application be disposed of by way of written submissions. Both parties complied and filed their respective submissions.

**Issues for Determination**

6. The court has had occasion to peruse the affidavit evidence presented by the parties as well as their respective written submissions. In the court's opinion, the only issue for determination is whether the Applicants have made a case for the grant of the order of a temporary injunction pending the hearing and determination of the main suit.

**Analysis and Determination.**

7. The principles to be considered before the grant of an order of temporary injunction are well settled since the case of **Giella Vs Cassman Brown & Co. Ltd (1973) E.A 358.**
8. First, the Applicant must demonstrate that it has a prima facie case with a probability of success. Secondly, a temporary injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the Application on a balance of convenience.

9. The Court of Appeal in the case of **Nguruman Limited Vs Jan Bonde Nielsen & 2 Others (2014) eKLR** while upholding the principles laid down in the **Giella** Case (Supra) held that the conditions and stages are to be applied as **separate, distinct and logical** hurdles and which the applicant is expected to surmount sequentially.

10. Therefore, if an applicant established a prima facie case, that alone is not enough basis to grant an interlocutory injunction. The court must be satisfied that the injury the Applicant will suffer if the injunction is not granted will be irreparable and incapable of being compensated by an award of damages.

11. On the other hand, if a prima facie case is not established, then irreparable injury and balance of convenience need no consideration.

12. A prima facie case was defined in the case of **Mrao Vs First American bank of Kenya & 2 Others (2003) eKLR**, to mean, 'a case where a Tribunal properly directing itself on the material before it, would conclude that there exists a right which has apparently been infringed by the opposite party hence the need to call for an explanation and a rebuttal.'

13. In the present case, the Plaintiff/Applicant alleges ownership of the suit property. The Respondents however, reiterate that the Applicant does not own the suit property. The Applicant's title to the suit property was **REVOKED** by a gazette notice No. 1549. The Applicant in its supplementary affidavit at paragraph 12 actually admits that the title to the suit property was indeed revoked.

14. The Applicant at paragraph 13 of the same supplementary Affidavit further states that from the gazette notice, it is only Kenya Airports Authority (KAA) who are in a position to deal with the suit premises.

15. This court agrees with the Respondents' submissions that the Applicant is not the legal owner of the suit property. The title to the suit property having been revoked means that it is non-existent! The Applicant's Director in his own words under oath confirms that it is yet to be issued with a lease by KAA.

16. Consequently the Defendant has not established a prima facie case to justify the issuance of a temporary injunction. The Applicant has not established that it has a right that has been infringed by the Respondents.

17. Having made a finding that the Applicant has not established a prima facie case, this court needs not go farther than that as guided by the **Nguruman** Case (supra).

18. Accordingly, the Applicant's application dated 27<sup>th</sup> August 2021 is hereby dismissed with costs to the Respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY 2022.**

**M.D. MWANGI**

**JUDGE**

In the Virtual Presence of:-

Mr. Ayugi h/b for Mr. Ojienda for the Plaintiff/Applicant

Ms. Nyamai for the Respondents

Court Assistant: Hilda

**M.D. MWANGI**

**JUDGE**