



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ELC NO 646 OF 2014

ASHMI INVESTMENT LIMITED.....PLAINTIFF

VERSUS

RIAKINA LIMITED.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

RULING

The application for the court's consideration is the plaintiffs *Notice* of Motion dated **23rd May 2013** brought under **Order 40 Rules 1,2 4 and 9 of the Civil Procedure Rules ,Order 50 Rule 1 section 1A,1B and 3A of the Civil Procedure Act** seeking for orders ;-

- i. ***that pending the heading and determination of this suit, the court issues a temporary injunction restraining the 1st defendant ,by itself, it servants or agents ,employees, officers or directors from evicting the plaintiff and or trespassing ,alienating ,leasing, selling ,charging and or committing acts or otherwise from interfering with the plaintiff's possession LR Nos. 29955 and 29957.***
- ii. ***Costs of the application be provided for.***

This application is premised on the grounds stated on the face of the application and the supporting affidavit of **Abdirahman Mohamed Elmi** the Director of the plaintiff company. He averred that the plaintiff was allotted a letter dated **28th July 1998** by the Commissioner of Lands.He further averred that Plaintiff was allocated the Land Reference **Number 29955 and 29957** and paid the requisite fees of ground rent, standard premium and survey fees and went into occupation of the suit property .He also averred that the 2nd defendant had in a letter dated **28th August 2013** written to the Managing Director of Kenya Airport Authority requesting on whether the plaintiffs plots are encroaching on their land. The 2nd defendant received a reply from KAA that the said plots were 18 meters from the airport. It was the Deponent further averrements that the 1st defendants servants or agents in their employment invaded the suit property on **19th May 2014**, in order to forcefully take possession of the suit properties. He alleged that the 1st defendant's actions is illegal and was therefore apprehensive that the 1st defendant would proceed with the eviction and unless restrained by the court. It was his further disposition that the 1st defendant would indeed carry out its threat and further cause the alienation of the suit properties. Therefore, unless the orders sought in the application are granted, the plaintiffs stand to suffer great irreparable loss, prejudice, damages and losses which cannot be compensated in damages.

The 1st defendant did not file a replying affidavit but the 2nd defendant through Silas Kiogora Mburugu filed a replying affidavit on 16th June 2014. I have looked at the replying affidavit and the written submissions filed by the 2nd defendant and the plaintiff respectively and made the following findings;-

I have considered the application, the affidavits and the written submissions. The plaintiff is seeking for a temporary injunction. These are equitable remedies granted at the discretion of the Court. See the case of **CMC Motors Group Ltd & Another Vs Evan Kageche Boro, Civil Appeal No.295 of 2001**, where the Court held that;

“In granting the injunctory reliefs, the superior court was exercising equitable jurisdiction which is discretionary and the Court of Appeal can only interfere with the judicial discretion of the learned judge if it is satisfied that the learned Judge did not exercise his discretion judicially”.

The principles for the grant of injunction are well settled in the case of **Giella –vs- Cassman Brown Limited [1973] EA 358**. In deciding whether or not to grant an injunction, courts have been guided by the consideration that unless the injunction is granted, the damage so occasioned is such that the applicant would not be adequately compensated by an award of damages. Secondly, the Applicant must show that his case has a probability of success. Thirdly, if the court is in doubt, it will decide the application on the balance of probability. The applicant must show or prove that the aim of the temporary injunction is to maintain the ***Status Quo*** until the determination of the whole dispute. Section 63(e) Civil Procedure Act gives this Honourable Court power to grant orders of a temporary injunction in all cases in which it appears to it to be just and convenient to do so to restrain any person from doing acts. The grant of a temporary injunction is invariably in the discretion of the Court.

In considering this application on whether the plaintiff has shown a prima facie case with chances of success, the Plaintiff has demonstrated that he was allotted the suit property on 28th July 1998. He explained that the reasons why they have been unable to obtain title deed was because of the dispute and disagreement between the 2nd defendant and the Cabinet Secretary. The plaintiff has shown that he had been paying rates at the Nairobi City Council and that the suit property has not encroached the Kenya Airports Authority. The 2nd defendant has confirmed that the title deeds have been prepared and are awaiting signature. I find that the plaintiff has prima facie proved that the suit property belongs to it.

On irreparable harm, the plaintiff has stated that the 1st defendant's servants /agents invaded the suit property and threatened to evict them from the premises. Being a company the plaintiff's assets stand to be damaged if the court does not protect its interests. The balance of convenience tilts in favour of the plaintiff who is in occupation of the suit property unlike the 1st defendant who is not on the property.

Having now considered the matter in totality, the Court finds that the Plaintiff has sufficiently satisfied the conditions of granting an injunction as elucidated in the case of **Giella –vs- Cassman Brown; (supra)**

The upshot of the foregoing is that the Plaintiff's application dated ***23rd May 2014*** is found to have merit. The same is allowed in terms of prayers ***No.3***. Costs shall be in the cause.

It is so ordered.

Dated, Signed and Delivered this ***22nd*** day of ***May, 2015***

L.GACHERU

JUDGE

In the Presence of:-

Mr Aporro holding brief for Mr Lakicha for the Plaintiff/Applicant

None attendance for the Defendant/Respondent

Court Clerk: Nyangweso

Court:

Ruling read in open Court in the presence of the above counsels.

L. GACHERU

JUDGE

22/5/2015