



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE NO. 104 OF 2012

FRIDAH KENDIPLAINTIFF /RESPONDENT

VERSUS

LAWRENCE MAJAU MBERIA1ST DEFENDANT/APPLICANT

FESTUS KATHENDU2ND DEFENDANT/APPLICANT

MUNICIPAL COUNCIL OF MERU3RD DEFENDANT

RULING

This application is dated 22nd April, 2015 and seeks orders:-

1. ***THAT the application be certified very urgent and it be heard ex-parte in the first instance.***
2. ***THAT pending inter partes hearing of the application, the ex-parte order of injunction granted and issued herein on 21.09.2012, be discharged forthwith.***
3. ***THAT pending hearing and determination of the application dated 09.12.2014 or the suit, the ex-parte Order of injunction granted and issued herein on 21.09. 12, be varied to the effect that all the rent accruing from the suit premises to wit , Plot No. 45 and Plot No. 62,both situated in Madaraka estate in Makutano area within Meru Township, be deposited in an interest earning account in a reputable bank, opened in the joint names of counsel for the 1st and 2nd defendants/applicants and the Plaintiff /respondent.***
4. ***THAT pending hearing and determination of the application dated 09.12.2014 or the suit, the plaintiff /respondent be ordered to forthwith release all the rent accrued, collected and received from the aforesaid plot No 45 and Plot No.62, both situated in Madaraka estate in Makutano area within Meru township, from the date of filing this suit to-date, and the same be deposited in an interest earning account in a reputable bank, opened in the joint names of counsel for the 1st and 2nd defendants/applicants and the plaintiff/respondent .***
5. ***That cost of the application be borne by the plaintiff/respondent.***

It is supported by the affidavit of Lawrence Majau Mberia and has the following grounds:-

- i. ***THAT the ex-parte order of injunction granted and issued herein on 21.09.12 should be discharged by virtue of Order 40 Rules 6 and 7 of The Civil Procedure Rules,2010.***
- ii. ***THAT the 2nd defendant/applicant is an innocent purchaser for plot No. 45 and Plot No.62***

both situate in Madaraka estate in Makutano area within Meru Township.
iii. *THAT the respondent has been exclusively receiving all the rent from the suit premises.*

On 14/05/15 when the application was to be heard interpartes, Mr.Kaimenyi, holding brief for Miss Kiome for the Plaintiff, told the Court that Miss Kiome had lost contact with the Plaintiff. In the circumstances I allow it with the effect that Prayer 4 is granted. Costs are awarded to the applicant.

It is so ordered.

Delivered in Open Court at **Meru this 14th day of May, 2015** in the presence of:-

CC: Daniel /Lilian

Carlpeters Mbaabu for Applicant

Kaimenyi holding brief miss Kiome for Plaintiff

P.M. NJOROGE

JUDGE