



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. NO. 909 OF 2013

FRANCIS KIMANI.....PLAINTIFF/APPLICANT

VERSUS

JOHN GAITI KINYANJUI..... 1ST DEFENDANT/RESPONDENT

PETER NJOROGE KAMAU.....2ND DEFENDANT/RESPONDENT

GEOFFREY THANGWA..... 3RD DEFENDANT/RESPONDENT

RULING

Coming before me for determination is the Notice of Motion dated 25th July 2013 in which the Plaintiff/Applicant seeks for a temporary injunction be issued restraining the Defendants from interfering with the Plaintiff/Applicant's possession of the parcels of land known as Kiambu/Municipality Block 11/52 and Kiambu/Municipality Block 11/53 (hereinafter referred to as the "Suit Properties") pending the hearing and determination of this application and suit together with costs.

The Application is premised on the grounds shown on the face of it together with the Supporting Affidavit of the Plaintiff/Applicant, Francis Kimani, sworn on 25th July 2013 in which he averred that he is the lawful lessor of the Suit Properties by virtue of a tenancy agreement granted unto him by the registered proprietors thereof being the Trustees of Kenya African National Union (KANU) Kiambu Branch. He further averred that while his tenancy agreement expired in 2010, the same was renewed for a further 5 years. He further stated that on 15th March 2013, he received a letter from Ngugi Waithuki & Co. Advocates on behalf of the Defendants/Respondents alleging ownership of the Suit Properties and demanding that he vacate the Suit Properties or be evicted. He further stated that he approached his landlord and enquired the correct position but was assured that he was in lawful occupation of the Suit Properties and the Defendants/Respondents were imposters or fraudsters. He further stated that his landlord's advocates wrote to the Defendants/Respondent's advocate advising them that KANU is the registered proprietor of the Suit Properties, which properties KANU had leased to him. He further stated that despite this, the Defendants/Respondents continued to threaten to forcefully enter the Suit Properties and evict him.

The Application is not contested.

In deciding whether to grant the temporary injunction, I wish to refer to and rely on the precedent set out

in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally 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 an application on the balance of convenience.”

Has the Plaintiff/Applicant made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

Looking at the facts of this case, to support his allegation that the Suit Properties belong to the KANU Kiambu Branch, the Plaintiff/Applicant produced two Certificates of Official Search dated 13th May 2013 in respect of the two Suit Properties, both showing that the registered proprietor thereof are Karanja Mete, Stanley M. Githunguri and Peter Warungi Mbugua as Trustees of KANU, Kiambu Branch. Further, as proof of his right to continue occupying the Suit Properties, the Plaintiff/Applicant has made a claim that he entered into a Tenancy Agreement with the Trustees of KANU Kiambu Branch which expired in the year 2010 but which, he claims, was renewed for a further term of 5 years. The Plaintiff/Applicant did not produce a copy of the Tenancy Agreement but produced a copy of a letter dated 7th December 2010 ostensibly from KANU Kiambu Branch purportedly renewing his tenancy in the Suit Properties. The said letter was not signed at the space for the Chairman, KANU Kiambu Branch but is signed by the Plaintiff/Applicant.

Based on the foregoing, I should say that there is a real likelihood that the persons named in the Certificates of Official Search as trustees of the Suit Properties on behalf of KANU Kiambu Branch are indeed the registered proprietors of the Suit Properties. However, it is noteworthy that those trustees are not parties to this suit and that there is a rival claim to the Suit Properties by the Defendants/Respondents which is yet to be resolved. In the absence of title documents to the Suit Properties, any claims to ownership remain unsubstantiated. The Plaintiff/Applicant’s position is not strong either considering that background and further that he has not produced a duly signed Tenancy Agreement. In the circumstances, I find that the Plaintiff/Applicant has failed to establish that he has a prima facie case with high chances of success at the main trial. That being my finding on the first condition set out in the **Giella** Case cited above, I see no reason to further interrogate whether the other two conditions have been met.

In light of the foregoing, I hereby dismiss the Application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI THIS 21st ____

DAY OF February _____ 2014

MARY M. GITUMBI

JUDGE