



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. CASE NO. 482 OF 2014

EMBAKASI HOUSING

COMPANY LIMITED.....PLAINTIFF/APPLICANT

VERSUS

THE CHIEF REGISTRAR

MINISTRY OF LANDS.....DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Motion dated 22nd April 2014 in which the Plaintiff/Applicant seeks for orders of temporary injunction restraining the Defendant/Respondent from giving title deeds and issuing allotment letters and or allocation the parcel of land known as L.R. No. 33745/IV/554 File No. 85098 (hereinafter referred to as the “suit property”) pending the hearing and determination of this Application and suit. The Plaintiff/Applicant also seeks for the costs of this Application to be provided for.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of Peter Macharia Nyanjathi, the Chairman of the Applicant, sworn on 22nd April 2014 in which he averred that the Applicant is a registered land buying company which carries on the business of buying land for subdivision among its registered members. He further swore that the Plaintiff subdivided the suit property into plots and its members were waiting for their allotment letters thereof. He further averred that there are persons who are encroaching into the suit property and they have allotment letters and or title documents illegally issued to them by the Respondent. He further stated that upon paying a visit to the Lands Offices at Ardhi House, he confirmed that in deed there is illegal issuance of allotment letters and title deeds by the Respondent to individuals who are not members of the Plaintiff in respect of the suit property.

The Application is uncontested.

In deciding whether to grant the interlocutory 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.”

Has the Plaintiff/Applicant established a prima facie case? This heavily depends on whether the Plaintiff/Applicant has been able to convince this court that it is indeed the proprietor of the suit property. The conventional way of proving this is by production to this court of valid title documents in respect of the suit property. The document that the Plaintiff has produced as evidence of ownership of the suit property is an illegible copy of a letter of allotment. It is not clear to my eye to whom the said letter of allotment is addressed and which property it relates to. Further, no evidence has been produced to indicate that the Plaintiff/Applicant complied with the conditions set out therein in order to assume ownership of the suit property. To that extent therefore, I find that the Plaintiff/Applicant has not established a prima facie case with a probability of success at the main trial.

Since the Plaintiff has failed to prove the first ground in the grounds set down in the celebrated case of **Giella versus Cassman Brown**, this Honourable Court need not venture into the other grounds. This position was upheld in the Court of Appeal case of **Kenya Commercial Finance Co. Ltd versus Afraha Education Society (2001) 1 EA 86** as follows:

“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is ... sequential so that the second condition can only be addressed if the first one is satisfied...”

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

SIGNED AND DELIVERED AT NAIROBI THIS 19TH

DAY OF SEPTEMBER 2014.

MARY M. GITUMBI

JUDGE