



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC NO. 774 OF 2014**

**RAPHAEL OCHIENG CHOKA.....PLAINTIFF**

**-VERSUS-**

**FREDRICK IGODI.....1<sup>ST</sup> DEFENDANT**

**AGNES OJANY.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed the suit on 16<sup>th</sup> June, 2014 seeking a permanent injunction to restrain the Defendants from interfering with the, alienating assessing the Plaintiff's house situate on Block 1A-12, Block V-18 rooms and Block C 6 rooms situate at Lunga Lunga Area, Viwandani Nairobi. Alongside the plaint, the Plaintiff also filed a Notice of Motion seeking an interlocutory injunction against the Defendants.
2. The Notice of Motion was dated 13<sup>th</sup> June, 2014. The Plaintiff swore an affidavit in support of the motion basically reiterating the contents of the Plaint.
3. Briefly, the Plaintiff says he is the rightful owner of some 36 houses at Lunga Lunga Viwandani Nairobi. He says he built the houses in 1986 and has been collecting rental income form the occupants who are his tenants until sometime in February, 2014 when the 2<sup>nd</sup> defendant wrote a letter asking that the tenants cease paying rent. He however also says that of the 36 houses he has sold 24 houses to Third parties. He does not however identify which houses. Neither does he identify the said third parties save for exhibiting two sale agreements which also do not identify the houses sold.
4. The Defendants though served with process did not attend the hearing of the notice of motion. The Defendants did not also file any replying affidavit. At the hearing of the Notice of Motion the Plaintiff relied wholly on the supporting affidavit and made no further submissions.
5. It is noted that the discretionary remedy of injunction is what is being sought from the court. The absence of the Defendant notwithstanding the court must therefore satisfy itself that the remedy is warranted in the circumstances.
6. I have carefully considered the motion as well as the documents filed before the court. It is

apparent that on the Plaintiff's own concession he no longer has any proprietary rights over most of the properties he seeks a blanket over in the form of an injunction. He has already disposed of the same to third parties. In the circumstances he probably lacks the requisite locus: see **Nairobi Permanent Markets Society & others –v- Salima Enterprises [1995-98] 1E.A 232**. The Plaintiff has not stated that he has any authority to commence the proceedings and neither has any such authority been exhibited. Secondly, even if the Plaintiff still has interest in some of the properties the same have not been identified. I therefore would not find that the plaintiff has any prima facie case. I hold that none has been established.

7. It is noted that the 2<sup>nd</sup> Defendant also claims to own the same property. She says she is the landlord. It will be for trial court to determine as between the 2<sup>nd</sup> Defendant and the Plaintiff who is the true and genuine landlord. Suffice to state now, that the 2<sup>nd</sup> Defendant is collecting rent the same can be easily quantified. If after trial the suit succeeds the Plaintiff will be easily compensated in damages. In short, I do not hold the view that the plaintiff in the absence of an injunction will suffer irreparably. Besides, an injunction will not ordinarily be granted where damages would be an adequate remedy: see **Mureithi –v- City Council of Nairobi [1981] KLR 331**.
8. The upshot is that the Plaintiff's application dated 13<sup>th</sup> June, 2014 fails. It is dismissed but with no orders as to costs as the Defendants did not attend to contest the same.
9. Orders accordingly.

**Dated, signed and delivered at Nairobi this 28<sup>th</sup> day of November, 2014.**

**J. L. ONGUTO**

**JUDGE**

**In the presence of:-**

.....for the Applicant

..... for the Respondent