



REPUBLIC OF KENYA
HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)
ENVIRONMENTAL & LAND CASE 301 OF 2011

MBUTHIA MACHARIA.....PLAINTIFF/APPLICANT

VERSUS

ANNAH NDINGWA MUTUA.....1ST DEFENDANT/RESPONDENT

COMMISSIONER OF LANDS.....2ND DEFENDANT/RESPONDENT

RULING

The matter presented before me was a Notice of Motion dated 14th January, 2013. It is supported by the supporting affidavit sworn by Mbuthia Macharia. In the said application the applicant makes prayer for the following orders:-

1. That this application be certified as urgent and be heard ex-parte in the first instance.
2. That this honourable Court be pleased to certify the application dated 2nd November, 2012 as urgent and the same be heard on a priority basis for reasons of its urgency.
3. That pending the hearing and determination of the Application dated 2nd November, 2012, interparte this Honourable Court be pleased to grant temporary orders of injunction restraining the 1st Defendant/Respondent from interfering with the Plaintiffs/Applicants possession and/or quiet occupation of that parcel of land known as **L.R. No. 209/7963/62** being a portion in the premises comprised in the grant registered in the registrar of titles at Nairobi as Number **I.R. 30840/1** the suit premises as prayed for in the said application dated 2nd November, 2012.

In addition to this application dated 14th January, 2013 there is on the Court file an earlier application dated 2nd November, 2012 and a plaint. Neither of the Defendants have entered appearance nor filed replying affidavits in respect of the two pending applications on the file. There are affidavits of service on the file indicating that the 1st Defendant was duly served with Court process as required in the Law. Service to the 2nd Defendant was unsuccessful.

Upon perusal of the entire Court file, specifically the application dated 14th January, 2013 which is before me for determination, I wish to state that I have seriously considered the averments made by the Plaintiff/Applicant in his Supporting Affidavit dated 14th January, 2013. In this affidavit, there is sufficient evidence has been adduced pointing to the fact that the 1st Defendant/Respondent has taken

steps to transfer the electricity account of the suit premises into her name. She has also gone a step further to hire an agent to commence collection of the rent over the rentals on the suit premises in her behalf. These are, in my view, bold steps taken to convert the benefit over the suit premises to her advantage.

In my view and upon perusal of the Court documents filed in the Court file I am convinced that the applicant has satisfied this Court that he has title to the suit premises. There has been no rebuttal of this fact emanating from either of the Defendants.

I wish to refer to and rely on the precedent set in the case of *Giella V. 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”.

Now let us analyze the applicants application as against these set principles to determine whether to grant or not to grant the applicant’s prayer for an interlocutory injunction.

1) Has a *prima facie* case been established? To my mind, I have been inclined to believe that the applicant is the *bonafide* proprietor of the suit property and that the 1st Respondent transferred title to herself under fraud.

2) Will the applicant suffer irreparable injury which would not be adequately compensated by damages? Again, my answer is that this condition is fulfilled. The applicant is a very elderly man whose health is not good.

This means that time to resolve this dispute is of the essence. I am satisfied that while the Court gives priority to this case, it should preserve the suit property to ensure expeditious disposal. I rule that this condition is fulfilled.

3) What is the balance of convenience on this application?

Again, I rule that on a balance of convenience, this Court grants the interlocutory injunction sought by the Plaintiff/Applicant to preserve the suit premises before the 1st Respondent attempts to interfere with the same to the detriment of the applicant.

In light of the above, I allow the applicant’s application dated with costs to the applicant.

SIGNED & DELIVERED ON THE 15TH DAY OF FEBRUARY, 2013.

MARY M. GITUMBI

JUDGE