



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL & LAND DIVISION
ELC NO. 90 OF 2013

MICHAEL O. OGOGO.....PLAINTIFF

-VERSUS-

CITY COUNCIL OF NAIROBI.....DEFENDANT

RULING

The Plaintiff by a Notice of Motion application dated 17th January, 2013 brought under Sections 1A, 1B, 3 and 3A of the Civil Procedure Act Order 40 Rules 1 and 2 , Order 51 Rule 1 of the Civil Procedure Rules 2010 seeks an injunction restraining the Defendant from any in anyway interfering with the plaintiff's leasehold proprietorship interests, rights of quiet possession, occupation and enjoyment of the premises including residence and comprising shop No. 17 in Shauri Moyo estate pending the hearing of this suit.

The plaintiff bases the application on the grounds that he has been and is the registered lease hold proprietor of the suit property under a lease agreement made on 8th October, 1979. The Plaintiff states that he is elderly and occupies the suit premises with his family and is current and upto date with his rental payments and has fulfilled all his obligations under the lease. The plaintiff avers that in breach of his rights and interests the defendant has vide its minutes of its Social Services and Housing Committee dated 7th November, 2012 purported to wrongfully and uncontractually terminate the plaintiff's tenancy and purportedly regularise the tenancy of an alleged third party while the Plaintiff is in exclusive and full possession and occupation of the premises.

The plaintiff avers that unless the Defendant is restrained by the court it will carry through the wrongful act to dispossess the plaintiff of the leased premises and the plaintiff will suffer irreparable loss.

The plaintiff additionally has sworn a supporting affidavit that reiterates the grounds set out above and annexes the documents in support of the plaintiff's averments. The plaintiff has annexed a copy of the lease agreement dated 8th October, 1979 between the plaintiff and the defendant. Under clause 10 of the said tenancy agreement the tenancy could only be terminated if the tenant had delayed in rent payment for a period of 21 days after the same has become due or if there was a breach of any stipulation of the

tenancy agreement. The plaintiff has annexed internal correspondences by the Defendant namely:

- i. ***Memo from Director, Investigation and information analysis to Director, Social Services and Housing dated 28th September, 2006. This was an investigative report that confirmed the plaintiff to be the tenant of shop No. 17 Shauri Moyo and the allocation to Mrs. Wambui Maina of same shop to have been fraudulent. The report recommended the refund of Kshs. 90,000/=to Mrs. Wambui Maina as it held that the double allocation was the mistake of the Council.***
- ii. ***Memo from Director of investigations & Information Analysis to Director Social Services & Housing Department dated 22nd September, 2009. This further investigation by the Defendant upheld the recommendations vide the earlier report under (i) above.***

Under minute 6 of the Social Services and Housing Committee it is recorded thus:

“Terminate the tenancy of the occupant and legalise (Ms. Wambui) in the shop No. 17 Shauri Moyo. The occupant to be refunded dues for the rent he had been paying the council”.

This is the resolution that has provoked this suit.

On the part of the Defendant Mr. J. N. Kariuki, the Director of Social Services and Housing of the Defendant has sworn a replying affidavit in opposition to the application by the plaintiff. The defendant under paragraph 7 of the replying affidavit admits that its rental committee terminated the plaintiffs tenancy and regularised the tenancy of one Wambui Kamau. The Defendant further avers that by reason of the termination of the lease the plaintiff lost all interest in the said property and illegally occupies the same. Under paragraph 9 the defendant avers that the plaintiff's application is premature and lacks merit on the following grounds:-

- ***That the respondent discharged its statutory duties by terminating the tenancy agreement with the plaintiff.***
- ***That the Plaintiff/applicant breached the tenancy agreement.***
- ***The plaintiff has not approached the court with unclean hands.***

The parties have filed written submission in which they reiterate the respective positions as outlined in the filed affidavits.

The court has reviewed the application, the filed affidavits in support and opposition and the parties submission and the following facts emerge: -

- i. ***That the plaintiff was granted a lease of the suit premises on 8th October, 1979 and has been in occupation of the suit premises ever since;***
- ii. ***That there has been a dispute as regards the suit premises with a third party (Mrs. Wambui Maina) which has previously been investigated by the Defendant and the plaintiff was stated to be the lawful tenant of the suit premises.***
- iii. ***That by a resolution of the Social Services & Housing of 7.11.2012 the Defendant resolved to terminate the tenancy of the plaintiff purportedly to regularise the tenancy of Ms. Wambui.***
- iv. ***The plaintiff is still in occupation and possession of the suit premises.***

Having regard to all the circumstances in this matter it is unclear as to how the issue of the tenancy of the suit premises came up for discussion at the defendants Social Services and Housing Committee on 7th November, 2012 particularly considering the same matter had previously been a subject of investigation within the defendant and it had been held that the plaintiff was the lawful tenant of the suit premises.

The defendant alleges that the tenancy of the plaintiff was terminated because of breach of the tenancy conditions by the plaintiff. The particulars and/or details of the breach are not furnished. In the circumstances of this matter it is the court's view that the alleged termination of the plaintiff's tenancy is shrouded in mystery.

In deed there is no indication that the plaintiff has been served with any notice of termination but to the extent that there is a resolution to terminate the plaintiff's tenancy the plaintiff has reason to be apprehensive that the defendant will give effect to the resolution. In the circumstances I would therefore hold the plaintiff has a prima facie case with a probability of success. The plaintiff holds a valid lease which the defendant can only terminate in accordance with the provisions thereto.

The plaintiff has occupied the suit premises for now over 30 years and incase he is evicted from the premises he certainly would suffer irreparable loss and damage. It is these premises that the plaintiff has known as home and it is from these premises that the plaintiff ekes out his living. An abrupt termination of the tenancy and eviction from the premises would in my view bring misery to the plaintiff and the damage would be irreparable. Having been in possession and occupation since 1979 to date the balance of convenience would naturally tilt in favour of the plaintiff.

In the premises I find and hold that the plaintiffs Notice of Motion has merit and grant an injunction in terms of prayer No. 3 of the Notice of Motion.

I award the costs of the application to the plaintiff/applicant.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JULY 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... **for the Plaintiff**

..... **for the Defendant**