



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION

E. L. C. CASE NO. 682 OF 2011

SALAMAT BIBI SHEIKHPLAINTIFF

VERSUS

REHMAT ALI 1ST DEFENDANT

NOOR MOHAMED.....2ND DEFENDANT

ABDUL RASHID.....3RD DEFENDANT

HUSSEIN BIBI.....4TH DEFENDANT

MAUREN MUJERA.....5TH DEFENDANT

RULING

Coming before me for determination is the Chamber Summons dated 29th November 2011 in which the Plaintiff/Applicant sought a temporary injunction against the Defendants restraining them from evicting the Plaintiff from that piece of land known as L. R. No. 209/3605 I.R. 9333/1 South C Malili Road (hereinafter referred to as the “Suit Property”) pending the hearing and determination of this application and suit.

The said application is supported by the grounds appearing on the face of it together with the Affidavit of the Plaintiff sworn on 29th November 2011. In that Affidavit, the Plaintiff stated that the Suit Property is registered in the name of her grandfather Rehmat Ali and his sons namely Noor Mohamed, Abdul Rashid and Hussein Bibi, all of whom left for London in 1972 leaving her with the original title deed to the Suit Property, a copy of which she produced. The Plaintiff further stated that she has lived on the Suit Property from 1972 to date and has been paying the land rent, rates and other utilities all these years. She also stated that she paid off a loan which was outstanding with the Kenya Commercial Bank. She further stated that the 5th Defendant, who is not the owner of the Suit Property and has not been in occupation thereof, has been making telephone calls and sending strangers to tell her to move out failing which she will evict her and her family. She further indicated that the 5th Defendant has registered a caution against the Suit Property on behalf of one Khalid Jared Sheikh claiming beneficial interest thereto. She disclosed that the said Khalid Jared Sheikh is a stranger to her and not a beneficiary of the Suit Property as claimed.

Despite having been served by way of substituted service, the Defendant/Respondents did not file any response to this application.

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 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, the Plaintiff has produced a copy of the title deed to the Suit Property which is in the name of her grandfather and her uncles. Clearly, the Plaintiff has disclosed that she is not the registered proprietor of the Suit Property. She discloses that she holds the original title deed and exhibited a photocopy of the same. She also disclosed that she has occupied the Suit Property for over 40 years. The question therefore arises as to what rights the Plaintiff has acquired by being the occupier of the Suit Property for over 40 years and being the custodian of the original title deed, albeit not in her name. I would say that this does not confer her any interest in the Suit Property capable of being protected by way of an interlocutory injunction. In fact, in cognizance of this fact, the Plaintiff has filed this suit as an Originating Summons claiming proprietorship of the Suit Property by way of adverse possession. This suit has not yet been concluded and is awaiting formal proof.

Arising from the foregoing, I am of the view that until this court declares the Plaintiff as the proprietor of the Suit Property by way of adverse possession, the Plaintiff does not have a right which has apparently been infringed capable of protection by means of an interlocutory injunction. Accordingly, I find that the Plaintiff has not established a prima facie case with a probability of success. That being my finding, I see no need in further interrogating whether the other principles in the **Giella** Case have been met.

Accordingly, I hereby dismiss this application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI

ON THE 20TH DAY OF SEPTEMBER 2013.

MARY M. GITUMBI

JUDGE