



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE 549 OF 2007
ESSENTIAL HIRE PURCHASE LIMITEDPLAINTIFF
VERSUS
CITY COUNCIL OF NAIROBI RESPONDENT

RULING

The plaintiff/applicant hereinafter referred to as the applicant has filed a Notice of Motion dated 29/9/11 brought under Order 40 rule 1,2, & 3 Civil Procedure Rules seeking the following orders:-

1. The City Council of Nairobi by itself, its servant or agent be and are hereby restrained from entering, trespassing on, remaining in or interfering with the plaintiffs occupation of or evicting the plaintiff from house No. "A" on L.R. No. 1/421 Kilimani (Mawingo Court) pending the hearing and determination of this suit..
2. Costs of this application be provided for.

The following application is based on the following grounds.

- a) The plaintiff is the lawful owner of house No. "A" L.R. No. 1/421 Kilimani (Mawingo Court)
- b) The City Council of Nairobi has threatened to evict the applicant from the said premises.

The application is supported by the affidavit of Francis Njuguga Ndegwa who states as follows;- He is the director of Essential Hire Purchase Limited; that on 27th October 1992 the City Council of Nairobi allocated House No. "A" on L.R. No. 1/421 Kilimani to Agnes O. Onyango who paid the requisite stand

premium and rent. On the 6th May 1997 Essential Hire Purchase Limited bought the said house from Agnes O. Onyango at a price of shs.2 Million and the City Council of Nairobi gave vacant possession on 4th January 2001. The applicant has been occupying the premises since then until when City Council of Nairobi attempted to stop the plaintiff from occupying the premises. That City Council of Nairobi has executed an assignment of lease in favour of the applicant yet City Council of Nairobi attempted to sell the same premises to a third party resulting in the filing of HCCC 1607 of 2001 which is still pending in court. That on 24th May 2011 this Court ordered that HCCC 1607 of 2001 be consolidated with this suit. On 14/9/2011 the City Council of Nairobi served them with an eviction notice and has since then been attempting to evict them from the premises.

Mr. Aduma J Owuor an Advocate of the High court employed by the Acting Director of Legal Affairs of the Defendant Council herein swore a replying affidavit dated 12th October 2011 and states as follows;- the application and the entire suit are incompetent, bad in law, misconceived and an abuse of the Hon. Court's process, that the application is supported by an individual on behalf of the plaintiff company without the authority of the Company and therefore application is therefore untenable in law; that the applicant had not demonstrated title obtained from the purported original allottee Agnes O. Onyango; the purported power of attorney on the basis of which a lease is alleged to have been executed by the Council in favour of the Plaintiff is non-existent or is otherwise a forgery. That the lease is itself a forgery as it does not indicate the advocates who purportedly drew it, it is not registered and it does not in the circumstances confer title; That the claim is founded on an illegality of forged, false and pretended documents and the application cannot therefore lie

I have carefully considered the affidavits filed together with submissions made in court .The applicant seeks injunctive orders. In the case of Geilla Vs. Cassman Brown Ltd E.A. 1973,the principle of granting an injunction were clearly laid down as follows;

1. That an applicant has to establish a prima facie case with a probability of success
2. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury
3. When the court is in doubt, it will decide the application on the balance of convenience.

The respondent has challenged the authority of Mr. Francis Njuguna Ndegwa in swearing the affidavit dated 24/9/2011. In the said affidavits he states that he is the Director of Essential Hire Purchase LTD. He has failed to state whether he had the authority of the company to swear the affidavit or file suit. A Company is a legal entity for it to file suit it can only act either with resolution of its members at a general meeting, or by its agents (*see HCC. 649 of 1996 Kabundu Holdings Ltd and another Vs. Patrick Mukiri Kabundu and others*). Mr. Ndegwa has failed to show that he had authority or resolution from the plaintiff company to file the affidavit or the suit.

The respondent in the replying affidavit has also challenged the authenticity of the lease attached and queried existence of the advocate who signed the said purported lease. These facts were not challenged by the applicant by way of supplementary affidavit. On these reasons I find that the applicant has failed to show that it has a prima facie case in the probability of success. The applicant has also failed to state the irreparable loss it will suffer. I therefore dismiss the application dated 29th September 2011 with cost to the respondent.

Dated and delivered this 11th Day of May 2012

R. OUGO
JUDGE

In the Presence of:-

For the Applicant

For the Respondents/Applicant

Court Clerk