

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT 535 OF 2011

GABRIEL OBOTE OGWELPLAINTIFF

VERSUS

NICHOLAS OGUTA.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

The Application that is before this Court for consideration is one dated 22nd September 2011 and is filed by the Plaintiff. The order sought is for a temporary injunction restraining the 1st Defendant from entering, constructing or doing any other act on plot No. 56 Kariobangi South Jua Kali Sheds (hereinafter referred to as the suit property), pending the hearing and determination of the main suit. The grounds for the application are that the Plaintiff was allocated the suit property in 1992 and has been in peaceful possession of the same since then, and that the Ist Defendnat is using his office at the City Council of Nairobi to take the suit property without any colour of right.

The Plaintiff in his supporting affidavit sworn on 22nd September 2011 states and that on 3rd November 2010 he received a notice to vacate a plot 127 he allegedly occupies and thereafter on 16th November 2010 the 1st Defendant demolished his workshop and later caused him to be arrested and charged at Makadara Chief Magistrates court in Criminal Case No 4537 of 2010. The Plaintiff claims that the 1st Defendant was allocated a plot neighbouring the suit property, and has attached a temporary allocation letter of the suit property given to him by the District Officer Embakasi Division and dated 14th January 1992, an enforcement notice with regard to plot 127 of the Jua Kali Project, Kariobangi South Sector VI, issued on 3rd November 2010 by the Nairobi City Council, and proceedings in Criminal Case No 4537 of 2010 in which the Plaintiff was charged with forcible detainer of the said plot 127, and which case was later withdrawn by the 1st Defendant who was the complainant.

The 1st Defendant in his replying affidavit sworn on 12th October 2011 states that he is was allocated Plot No 52, Kariobangi South Sector VI by way of an allotment letter dated 27th October 1992 by the City Council, which allocation was later formalized on 6th November 2002. He has attached two letters of allocation of the said dates, the first referring to plot 52 and the second to plot 127, both in Kariobangi South Sector VI. He admits to having the Plaintiff evicted from the suit property and reporting his trespass to the police as a result of which the Plaintiff was charged with a criminal offence.

The Plaintiff's, 1st and 2nd Defendant's Advocates filed written submissions dated 16th November 2011, 22nd December 2011 and 23rd February March 2012 respectively, and made oral submissions at the hearing of the Plaintiff's application on 8th May 2012. The Plaintiff's Advocate submits that the Plaintiff has demonstrated a *prima facie* case as he has shown that he is a lawful allottee of Plot 56 and therefore meets the threshold in **Giella v Cassman Brown & Co Ltd, (1973) EA 358**. Further that if the 1st Defendant continues to construct structures on the suit premises he will be inconvenienced and will lose income from his jua kali business. The 1st and 2nd Defendant's Advocates argued in their submissions that the Plaintiff has not met the criteria for grant of injunction as he has no valid claim to Plot 127, and is not in occupation of the same.

I have read and carefully considered the pleadings, evidence and submissions by the parties to this application. I will proceed with the determination of the application on the basis of the requirements stated in **Giella v Cassman Brown & Co Ltd, (1973) EA 358**. The main issue therefore is whether the Plaintiff has shown a *prima facie* case to entitle him to the injunction sought. The Plaintiff's claim in the Plaintiff dated 22nd September 2011 is that he is an allottee of Plot N0 56 by virtue of an allocation made by the Government of Kenya and the City Council of Nairobi. The evidence that he has produced of such allotment is a temporary allocation letter by a District Officer. No evidence of allotment by the City Council of Nairobi or Commissioner of Lands has been provided, neither has the Plaintiff provided any evidence to show the existence and location of Plot No. 56 Kariobangi South Jua Kali Sheds, which plot the 1st Defendant claims is Plot No 127 Kariobangi South Sector VI. This Court cannot make orders with regard to land which may be non-existent.

In light of the reasons given in the foregoing, I find that the Plaintiff has not established a *prima facie* case and his application dated 22nd September 2011 is hereby dismissed.

The Plaintiff shall meet the costs of the said application.

Dated, signed and delivered in open court at Nairobi this ____20th____ day of ____July____, 2012.

P. NYAMWEYA

JUDGE