



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL & LAND CASE 125 OF 2012

**PHOEBE WANGUI GAKUI.....PLAINTIFF/
APPLICANT**

VERSUS

**CITY COUNCIL OF NAIROBI.....DEFENDANT/
RESPONDENT**

RULING

The Plaintiff/Applicant (Applicant) in a notice of motion dated 12/3/2012, seeking orders that:

- i. The Honourable Court be pleased to grant an order restraining the defendant, whether by itself, its agents, employees, servants or any other person claiming under it from demolishing, evicting and/or on any manner interfering with the plaintiffs quiet enjoyment of user and possession of her dwelling house No. 187 on that parcel of land known as L.R No. 209/13539/210 or in any manner from harassing the plaintiff, her agents or workers on said parcel of land pending the hearing and determination of this suit.
- ii. That the costs of this application be in the cause.
- iii. That all necessary directions and/or any other order that this Honourable Court may deem fit be given.

The application is premised on grounds that the Applicant is the registered owner of the suit property, being an innocent purchaser for value without notice and therefore has sufficient proprietary interest therein.

The application is supported by a Supporting Affidavit sworn by the applicant on 12/3/2012. The applicant deposes that she purchased the suit property from the Defendant. That she was issued with a notice to vacate the suit property yet she is not a tenant, thereby threatening her peaceful and quiet enjoyment of user of the suit property. She contends that she has never been a tenant of the defendant, and that there is no landlord – tenant relationship as purported by the defendant and that the conditions of the tenancy are unknown to her.

The Defendant filed a Replying Affidavit sworn by J. N. Kariuki dated 11/4/2012. The deponent stated that he is the Director of Social Services and Housing Department of the City Council of Nairobi, and therefore competent to swear the affidavit. The deponent admits that the Applicant was issued with a notice to vacate the suit premises as she was in contravention of the clause No. 4, 5, and 10 of the conditions of the tenancy agreement. She deposes that there was an attempt to sell the houses at Joseph Kag'ethe estate by the Defendant, but that the sale was nullified as the Defendant had not alienated the land. That some of the tenants who purported to purchase the said houses have gone to court to challenge

the nullification of the sale, and that the cases are pending in court.

The issue before me, according to the Applicant is ownership of House No. 187 on the piece of land known as L.R No. 209/13539/210 off Suna Road. She contends that she is not a tenant and that there is no landlord – tenant relationship between herself and the Defendant. She has exhibited the notice that was served upon her which is titled Notice to Quit and ordering her to vacate the house by 13/3/2012. The applicant has also exhibited in her affidavit a Letter of allotment, evidence of payment, and Letter authorizing the Director of Finance/Chief Revenue Officer to accept payment from the Applicant. The Respondent has not disputed the existence of these documents. In its affidavit, it has not addressed the issue of ownership of the suit property, but has brought about the issue of unblocking of a sewer line that passes through the suit premises. The Defendant’s Affidavit is squarely on the issue of nuisance caused by a sewer line in the Applicant’s premises. If that is the case, the Defendant should file appropriate proceedings against the Applicant or serve the requisite notices upon her.

At this stage I find that the Applicant has exhibited that she has proprietary interest in the suit premises which is sufficient at the interlocutory stage. I find that she has a *prima facie* case with a probability of success. The Applicant is likely to suffer irreparable loss in the event that she is evicted from the suit premises. The balance of convenience tilts in her favour.

I therefore an order of injunction restraining the defendant, whether by itself, its agents, employees, servants or any other person claiming under it form demolishing, evicting and/or on any manner interfering with the plaintiffs quiet enjoyment of user and possession of her dwelling house No. 187 on that parcel of land known as L.R No. 209/13539/210 or in any manner from harassing the plaintiff, her agents or workers on said parcel of land pending the hearing and determination of this suit.

Cost shall be in the cause.

Orders accordingly.

Dated and delivered this 20th day of July 2012

R. OUGO

JUDGE

In the Presence of:-

..... For the Plaintiffs

..... For the Defendants

Kabiru Court Clerk