



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

H.C.C.C. NO. 148 OF 2011

LESIIT J.

KAIMBA MANGAARA.....PLAINTIFF
VERSUS

MUNICIPAL COUNCIL OF MERU.....RESPONDENT

R U L I N G

The application is Notice of Motion dated 26th October, 2011. It has been brought under O.40 rule 1&2 of the Civil Procedure Rules & Section 1A & 1B of the Civil Procedure Act Cap 21 Laws of Kenya. It seeks Order 3 in the following terms:

That this honourable court be pleased to grant an order of temporary injunction restraining the Respondent, its agents, servants, employees, assigns or anybody else acting on its behalf or behest of all that parcel of land known as Meru Municipality Block 11/316 pending the hearing and determination of the suit.

The application is supported by grounds on the face of the application which are as follows:

- 1. That the respondent is threatening to evict and estop the applicant from continuing with his developments over all that parcel of land known as Meru Municipality Block 11/306.**
- 2. That the applicant is the registered owner of the lease hold interest of all that parcel of land known as Meru Municipality Block 11/316.**
- 3. That it is only fair just and equitable that the orders sought be granted as the applicant shall suffer irreparably.**

The application is further supported by the Supporting Affidavit of Kaimba Mangaara, the plaintiff in this case.

The respondent was served through the plaintiff advocate. Service was effected upon the clerk to the Defendant Municipal Council. The court ordered the Plaintiff to serve the Defendant again before the applicant was heard. The Plaintiff obliged and served the clerk to the Defendant Council a second time. Even then, the Defendant did not enter appearance or file any replying affidavit.

Mr. Mwanzia urged the application on behalf of the Applicant. Counsel relied on the grounds on the face

of the application and on the supporting affidavit.

Mr. Mwanzia submitted that the applicant was the lease hold over the suit property and that he had paid rates for the property to rates for the property to date. Counsel urged that the applicant had deposited building materials and had building plans approved by the council. That after complying with the requirements the defendant moved in and stopped the applicant from building on the land.

Mr. Mwanzia urged that there was a suit between the applicant and another party over the suit property in Meru Chief Magistrates Court in 1994. Counsel referred the court to annexure 5, the judgment in the said case in which judgment was entered in favour of the plaintiff/applicant.

The application seeks a temporary injunction to restrain the defendant from interfering with the applicants quiet user, occupation and developments thereon of the Parcel No. Block 11/316 pending the hearing and determination of the suit.

The application is unopposed. The applicant has to show that he has a prima facie case with a likelihood of success alternatively he has to show that he will suffer irreparable damage which cannot be compensated by an award of damages.

If the court is unable to decide the case on the two principles above, the court has to decide the application on a balance of convenience.

These principles were set out in the celebrated case of **Giella Cassman Brown & another 1973 EA 358.**

“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 normally be 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.”

I have looked at the plaint filed by the applicant herein. I have confirmed that the Applicant seeks inter alia a prayer for permanent injunction. That is a prerequisite to granting the injunctive relief sought here. The prayer is however, duplex and the Applicants advocate is advised to correct the mistake by an amendment.

The power of the court to grant an injunction are discretion any. That means the court has the power to decline injunction in its own discretion.

The application has shown that the suit property was allocated to him by a letter of Allotment dated 4th December 1992. He has also shown that he has a certificate of lease over the suit property. The lease is dated 15th June, 1994. The proprietorship section of the lease shows that the property is free from any encumbrances. The applicant has demonstrated that he pays rates for the suit property. He has annexed the latest Rates Payment Receipt dated 16th September, 2011.

I find that the Applicant has established that he has a prima facie case with a prima facie the Applicant has a lease over the suit property. I will allow the prayers sought in terms of Order 3 as follows:

- 1) An order of a temporary injunction be and is hereby issued restraining the Respondent pending the hearing and determination of the suit.
- 2) The Respondent do bear the costs of the application.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF NOVEMBER, 2011

J. LESIIT
JUDGE