



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case ELC 252 of 2008

STEPHEN KIPKEBUT T/A RIVERSIDE LODGE AND ROOMS..... PLAINTIFF

VERSUS

NAFTALI OGOLA DEFENDANT

RULING

APPLICATION FOR INJUNCTION TO EVICT
DEFENDANT FROM LAND DATED 27 MAY 2008

I: Background

1. Stephen Kipkebut t/a Riverside Lodge and Rooms was allocated land situated along Jogoo Road within the City of Nairobi being LR209/14318 IR 86311 for a period of 99 year lease with effect from 1 June 1998.

2. He had obtained a loan to develop the property and is unable to begin his development because he has found the defendant on the land.

3. The defendant has been sub-letting the land to the members of public and collecting rent. There are business premises of garages being undertaken on the property.

4. The plaintiff filled this suit and prayed for a:-

- i) Permanent injunction to restrain the defendants, his tenants, sub tenants and workers from trespassing on the property.
- ii) For vacant possession.
- iii) He prayed for assistance form the police
- iv) Mense profits and costs of the suit

5. Under a certificate of urgency, the plaintiff filed on the same day of 27 May 2008, an application seeking the very same prayers as is in the plaint, being the vacant possession of the property.

6. The plaintiff is under pressure as he has taken out a loan.

7. The defendant on being served, failed to attend court. The proceeding continued under Order IXB r 3(a) Civil Procedure Rules, that the defendant had notice of this matter and was absent, the case may proceed ex parte against him.

II: Application for injunction for vacant possession 27 May 2008

8. The prayers in this application has been very clearly put. It asks for the plaintiff to be restrained from being on the property. This is a mandatory prayer for an injunction which is not available unless for exceptional circumstances.

9. The plaintiff should proceed to the main suit for hearing where he wishes to have the defendant evicted from the land. It is not correct to do so by an application.

10 In a situation where the dispute is on ownership of land, then the one whom the court declares is the owner of the land has a right to bring an application to seek the eviction of the other party.

11. In this application the same is declined. It is dismissed with no orders as to costs as the defendant was absent during the hearing.

DATED THIS 18TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

O.P. Ngoge instructed by O.P. Ngoge & Associates Advocates for the plaintiff/applicant – present

M.K. Migiwa instructed by Odera Obar & Co. Advocates for the defendant/respondent - present