



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 1000 OF 2002**

**JONES GACHIE NGURE.....PLAINTIFF**

**VERSUS**

**NICHOLAS MWANGI MAINA & ANOTHER.....DEFENDANT**

**RULING**

This is the plaintiffs application for an order of injunction to restrain defendants from evicting plaintiff from half share of house Bahati/161 on the ground that he occupied the house in or about 1997 and has been paying rent to Nairobi city council.

According to averments in the plaint and in the application the original tenant in the house was one Wahito who was employed by Nairobi City council and who the plaintiffs grandmother she retired in 1981 and left the house to Jimnah Nduati Mwangi who is the plaintiff's brother. Jimnah left the house and went to live in Muranga leaving plaintiff in occupation of the house. Plaintiff continued to pay rent. Then first Defendant was allocated half share of the house. Then on 11.12.2001 plaintiff's goods were removed from the house in his absence and the partition removed. He was restored on 16.12.2001.

The first respondent says that he was allocated the house in 1999 and was staying with Jimnah Nduati until year 2000 when Jimnah Mwangi left he deposes that he is the lawful tenant, that he has been paying rent alone; that applicant came to the house in April 2002 and that applicant is not a tenant and has not been paying rent.

Margret Mbuya Jobita Director of Social Services and Housing employed by Nairobi City Council deposes that the first defendant is the lawful tenant and that the house was properly allocated to him by a full council meeting held on 20.4.2001. She has annexed the Minutes she states that applicant is not a tenant, that applicant has no rent land and that applicant does not pay any rent.

Applicant has annexed an appeal dated 22.5.2001 which he made after whole house was allocated to first defendant. The Nairobi City Council is the owner and the Landlord of the suit house. The records show that plaintiff's brother Jimnah Nduati Mwangi was at one time occupying the house. It is admitted by plaintiff that his brother left the house and went to live in Muranga. But plaintiff claims that he is a tenant of half share of the house as whole house was left to him by his brother Jimnah Nduati Mwangi. Plaintiff has not however shown that Prima facie he has ever entered into a tenancy agreement with Nairobi City Council. He has no document to show that after his brother left the house to him the Council officially allocated the house to him. He has no rent card to show that council recognizes him as a tenant. He has not documentary evidence to show that he has ever paid any rent to the Council. The Council allocated the whole house to the first defendant. He has a rent card and has annexed receipts to show that he has been paying rent. The Council recognizes the first defendant as the lawful tenant. The decision of the full Council allocating the house to the first defendant has not been reversed by the council or by the court.

The plaint filed does not seek the revocation of the decision of the Council.

Plaintiff has not established a prima facie case with a probability of a success that he is a tenant of the Nairobi City Council. Indeed his case show that it is his brother who was a tenant. Plaintiff has no locus standi.

Consequently, I dismiss the application with costs to the respondents.

E. M. Githinji  
Judge  
23.7.2002

Applicant present

Mrs Ngala for 2nd Respondent present