



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC SUIT NO. 115 OF 2019

FTK.....PLAINTIFF

VERSUS

MNT..... DEFENDANT

RULING

1. The Plaintiff/Applicant is the husband of the Defendant/Respondent. The two have been living separately since 2017 and there is an ongoing divorce case. The Applicant filed a suit in which he sought a permanent injunction against the Respondent barring her from entering or collecting rent from his three properties namely, Plot No.[....] at Kiambiu settlement scheme, Plot No. Nairobi/Block [....] and Plot No. [....] Pipeline Kwa Ritho, Nairobi.
2. The Applicant contemporaneously filed an application dated 27th march 2019 in which he seeks a temporary injunction in similar terms. The Applicant contends that her estranged wife has been collecting rent from the three properties which he solely owns but that his wife has refused to give him any money accruing from the rental income. He contends that he is sick from eye problems which require urgent medical attention at the cost of Kshs.800,000/= but that he is unable to get treatment due to lack of money.
3. The Applicant further contends that the Respondent has her own properties where she earns monthly rental income of over 1,500,000/=; that she has built a house worth Kshs.50,000,000/= at Muthaiga North where she lives but has left him to live a destitute life alone.
4. The Respondent opposed the Applicant's application contending that the Applicant has come to court with unclean hands; that the Applicant is a lazy man who has failed to sustain businesses which the Respondent started for him; that the Respondent secured an insurance for the Applicant which has a cover of 3,000,000/=and that therefore the Applicant cannot claim that he cannot afford medical treatment.
5. The Respondent argues that two properties belonging to the Applicant at Kiambiu Settlement Scheme were adjacent to her own plots in the same area. The two agreed to develop them as one plot and that the rental income from the properties goes to Equity bank where they had a deed of assignment with the bank. The Respondent contends that the Applicant is staying in their matrimonial house at Kimathi Estate and does not pay rent and that he does not even support the children of the marriage.
6. In answer to the Respondent's affidavit, the Respondent contends that he had put his children in good schools but that the Respondent secretly took them to learning institutions in Canada without his consent.
7. I have carefully considered the application by the Applicant as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has disclosed a case to warrant issuance of an injunction. The principles for grant of injunction are well settled. **See Giella Vs Cassman Brown & Co.Ltd (1973) EA 358.**
8. To begin with, the Applicant has come to seek a temporary injunction which is the same as the relief he is seeking in the main suit. The Applicant did not disclose that he has a medical cover. He came to court because he could not afford medication in the region of Kshs.800,000/=. It has turned that he has a medical cover of up to Kshs.3,000,000/=. Besides this, he is covered by National Hospital Insurance Fund (NHIF).
9. The Applicant also failed to disclose that the two properties at Kiambiu Settlement Scheme have been developed as one plot each when in reality, one belongs to the Respondent. The rental income goes to Equity Bank as per the deed of assignment which was signed by the

Applicant. Equity demands that whoever invokes its aid must come to court with clean hands. This being the case, the Applicant has failed to demonstrate a case with probability of success. I therefore find no merit in this application which is dismissed with no order as to costs as the two are a couple.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF FEBRUARY 2021

E.O.OBAGA

JUDGE

In the Virtual presence of:-

M/s Oduor for M/s Odede for Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE