

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CIVIL CASE NO. 359 OF 2001

FRED KAMAU CHEGE.....PLAINTIFF

V E R S U S

NAIROBI CITY COUNCILDEFENDANT

R U L I N G

This Chamber Summons application brought under Order XXXIX Rule 1, 3(1) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act was filed in this Court on 7th March, 2001 under a Certificate of Urgency. The Applicant (Mr. Fred Kamau Chege) seeks to restrain Nairobi City Council (hereinafter referred to as the “Respondent”), and its servants or agents from entering and/or interfering with the Plaintiff’s quiet possession and rights of ownership in L.R. NAIROBI/BLOCK 107/382 pending the hearing and determination of this suit. The application is premised on inter alia , the following grounds:

- a. “That the Plaintiff is the registered owner of L.R. Nairobi/Block 107/382, a fact well within the defendant’s own knowledge.***
- b. The defendant has threatened without any right to interfere with the Plaintiff’s quiet possession and rights of ownership as enshrined under the laws of the land.***
- c. The grounds contained in the annexed affidavit and in the pleadings herein.”***

The facts leading to the filing of this application may be summarized as follows: -

The Commissioner of Lands by an Allotment Letter dated 18th January, 1994, allocated Plot No. BLOCK 107/382 (hereinafter referred to as the “suit land”) in Umoja II to the Applicant for a term of 99 years commencing from the 1st day of January, 1994. The suit land measuring approximately 0.2494 hectares was for the development of a nursery school thereon. A lease was then signed by the parties on 6th February, 1998 and a Certificate of Lease issued by the Nairobi Land Registrar on the same day. The Applicant forwarded his building plans for approval of the Respondent Council on 30th November, 1999 and the same were approved on 12th January, 2000 for the building of a nursery school on the said land. By a letter dated 12th February, 2001, the Applicant through his Advocates on record, namely, J.M. Mugo & Company Advocates, complained to the Respondent about the occupation of his land by one of the Council’s Officers, a Mr. Julius Mbugua Mungai purportedly under the instructions of the Council. That demand letter was followed by another letter dated 27th February, 2001 from the Applicant’s Advocates addressed to the Town Clerk of the Respondent asking the Council to, among other things, collect some desks from the Applicant’s land. The question of how that furniture came to be on the Applicant’s land is answered by the Replying Affidavit of one N.K. Mulinge, the Director of the Housing Development Department of the Respondent. In paragraph 5 of his affidavit sworn and filed in this Court on 19th April, 2001, the deponent states: -

“THAT, on the said plot stands a building that formerly acted as a site office during the construction of Umoja 2 estate.”

In the subsequent paragraph, he states that the said office is not occupied or used by the Defendant’s staff. It is clear that some of the Respondent’s property is still on the Applicant’s land even after the development of Umoja II Estate was completed.

An *ex parte* Order restraining the Respondent/Defendant from interfering with the Plaintiff’s quiet

possession of the suit land was issued on 7th March, 2001 by Honourable Justice Osiemo. At the *inter partes* hearing of 21st March, 2001, Githinji J. extended that Order for 30 days while giving the Respondent fourteen days to file its Replying Affidavit. The parties then appeared before me on 3rd July, 2001. Mr. Mugo, the Learned Counsel for the Applicant/Plaintiff, argued that his client is entitled to the use of the suit land peaceably without any interference of the Defendant. He referred this Court to my ruling in **High Court Civil Case No. 535 of 2000 (Cross Current Indegnous Network vs. Commissioner of Lands & Another)**. On the other hand, Mr. Muguku for the Respondent/Defendant maintained that there is no proof of the Respondent's interference with the suit land and admitted the Applicant's ownership of the same. He submitted that the Respondent can pay damages and an injunction should not issue. Further that the case of **Cross Current Indegnous Network v. Commissioner of Lands & Another (supra)** is irrelevant to the application at hand and the case of **Giella v. Caseman Brown & Co. Ltd. [1973] E.A. 358** applied. I completely agree with Mr. Muguku on that point. The case of **Cross Current Indegnous Network** (supra) concerned some land for which no certificate of title had been granted, and with respect, cannot apply to this matter. The relevant considerations in granting a temporary injunction were set out in **Giella v. Cassman Brown & Co. Ltd** (supra) as:

- (a) the Applicant must show a prima facie case with a probability of success;
- (b) an interlocutory injunction will not be granted unless the applicant will suffer irreparable injury that cannot be compensated by an award of damages; and
- (c) if the Court is in doubt, it will decide the application on a balance of convenience.

Considering that the Applicant's leasehold title is indefeasible by virtue of Section 27(b) of the Registered Land Act (Cap. 300) except in accordance with that Act, and that any interference therewith may not be adequately compensated by damages, this Court grants the Applicant the temporary injunction as prayed.

The costs of this application are to the Applicant.

DATED and DELIVERED at NAIROBI this 24th day of July, 2001.

ALNASHIR VISRAM

JUDGE