Njoroge v Mwaniki (Environment & Land Miscellaneous Case E045 of 2023) [2023] KEELC 18683 (KLR) (6 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18683 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND MISCELLANEOUS CASE E045 OF 2023

LN MBUGUA, J

JULY 6, 2023

BETWEEN

LILIAN NJERI NJOROGE ..... PLAINTIFF

AND

KENNEDY MWANGI MWANIKI ..... DEFENDANT

RULING

1. Before me is a notice of motion application dated February 3, 2023 where the plaintiff is seeking a mandatory order of injunction against the defendant to vacate from land parcel Nairobi /Block 136/12241, the suit land, and that the OCS Kayale Police Station do assist in enforcement of the said orders.

2. The application is premised on grounds on its face and on the supporting affidavit of the applicant. The plaintiff claims to be the registered owner of the suit property. However, the defendant has apparently trespassed on the said land and has put up a structure. Efforts to serve the defendant with the eviction notice have been futile.

3. In opposition to the claims of the plaintiff, the defendant has filed a replying affidavit dated March 7, 2023 where he claims that he bought the suit property when it had a two bedroomed permanent house way back in year 2016. He contends that the certificate of ownership in custody of the plaintiff must have been acquired irregularly.

4. On May 23, 2023, this court directed the plaintiff to file and serve her submissions by June 13, 2023, while the defendant was to file and serve his by June 20, 2023. None of the parties complied with these directions.

5. The issue for determination is whether the prayer for a mandatory injunction is warranted at this stage. The test on whether to grant a mandatory injunction or not was correctly stated by the Court of Appeal in *Kenya Breweries Ltd v Okeyo* [2002] 1 EA 109 as follows;

> " The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury's Laws of England 4th Edition paragraph 948 which reads:
>
> 'A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the Defendant attempted to steal a march on the plaintiff .... a mandatory injunction will be granted on an interlocutory application"

6. The applicant has not advanced any special circumstances which warrant the issuance of the mandatory orders of injunction. If anything, the dispute appears rather convoluted with each side of the coin staking a claim of ownership of the suit property.

7. What more, it is apparent that the plaintiff has sought for orders of eviction in her plaint. It follows that granting the orders sought in the current application would be tantamount to granting a major relief at an interlocutory stage-See *Daniel Atibu Jasimba v Ainea Sandanyi Magana* [2013] eKLR.

8. In the end, I find that the application dated February 3, 2023 is not merited, the same is hereby dismissed. Costs there of shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

M/s Mwangi holding brief for M/s Ngugi for Defendants

Kinyua for Plaintiff

Court Assistant: Betsy