



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 62 OF 2019

MOHAMED SULEIMAN WARSAME.....PLAINTIFF

- VERSUS -

ADAN NURA ABASS.....DEFENDANT

RULING

1. The plaintiff brought this suit through a plaint dated 22/2/2019. He sought the following orders against the defendant:

- a. A permanent injunction restraining the defendant by himself, servants, legal representatives agents or howsoever from entering into, chasing away workers, blocking, or any other manner interfering with the plaintiff's rental premises on Land Reference Number 36/II/261 situated in Nairobi**
- b. General damages.**
- c. Costs of the suit plus interest**
- d. Any other relief that this honourable court may deem fit and just to grant.**

2. His case was that on 28/11/2016, he entered into a 7 year and 2 months lease agreement with the late Wilfred Nyagweso in respect of Land Reference Number 36/261 situated on 7th Street, Eastleigh, Nairobi. On 13/2/2019, during the subsistence of the lease, the defendant attempted to invade the premises and evict him. He averred that as a tenant, he was entitled to a notice and none had been served on him.

3. Together with the plaint, the plaintiff brought a notice of motion dated 22/2/2019 seeking a temporary injunction restraining the defendant against "entering into, evicting, occupying, trespassing, chasing away workers, blocking" or in "any other manner interfering with the plaintiff's rental premises known as Land Reference Number 36/II/261". The matter came before court for an *ex-parte* hearing on 25/2/2019 and upon perusing the papers, the court observed from the papers presented by the plaintiffs that the Business Premises Rent Tribunal had authorized the defendant to evict the plaintiff and it was not clear if the order authorizing the said eviction had been vacated. The plaintiff was directed to serve the application and come for interpartes hearing.

4. On 20/2/2002, counsel for the plaintiff appeared before court and applied to withdraw the application dated 22/2/2019 on the ground that the application was spent.

5. About 8 months later, the plaintiff brought a second application dated 19/11/2020 seeking interim injunctive orders restraining the defendant against constructing structures on, developing, leasing or in any other manner interfering with the suit property. The said application dated 19/11/2020 is the subject of this ruling.

6. The application was supported by the plaintiff's affidavit sworn on 19/11/2020, in which he deposed that on 26/10/2002, the defendant started erecting structures on the suit property contrary to an earlier "gentleman's arrangement" where they had agreed that parties' respective interests were to be addressed in the main trial.

7. The application was orally canvassed in the virtual court on 11/2/2021. Mt Ondabu, counsel for the applicant, submitted that the plaintiff had a lease with the late Nyangweso who was the defendant's predecessor in title. He added that the plaintiff had developed the suit property and leased the developments to tenants. During the pendency of this suit, the plaintiff was evicted and the structures which he had erected on the suit property were demolished. He urged the court to grant the plaintiff the injunctive orders.

8. Mr Wanjohi, counsel for the defendant, submitted that the plaintiff had not satisfied the criteria for grant of an injunction. He added that

the plaintiff's application was an abuse of the process of the court because the plaintiff had filed a multiplicity of applications. He urged the court to dismiss the application.

9. I have considered the application, the grounds of opposition and the parties' respective submissions. I have also perused the entire record before me. The key question falling for determination in this application is whether the applicant has satisfied the criteria upon which our trial courts exercise jurisdiction to grant interlocutory injunctive reliefs. The criteria was spelt out by the East African Court of Appeal [Spry VP] in **Giella v Cassman Brown (1973) EA 358**. First the applicant is required to satisfy the court that he has a prima facie with a probably success. Second, the applicant is required to demonstrate that if an injunctive relief is not granted, he would stand to suffer irreparable injury for which he may not be adequately indemnified through an award of damages. Third, should the court have doubt on both or either of the above two limbs, it is to determine the application based on the balance of convenience.

10. Further, at the stage of disposing an application for interlocutory injunctive relief, the court does not make definitive or conclusive pronouncements on the substantive questions or issues in the main suit.

11. The present applicant first came to court under a certificate of urgency on 22/2/2019. On perusal of the papers presented by the applicant, the court observed that the Business Premises Rent Tribunal (BPRT) was seized of the dispute and had issued an eviction order against the plaintiff. The court accordingly declined to grant *ex-parte* injunctive orders and directed the applicant to serve the application on the defendant. Subsequently, the defendant filed a replying affidavit in which he deposed that the tenancy agreement which the applicant was wawing was the subject of Criminal Proceedings in **Makadara Criminal Case No 1766 of 2018**. He further deposed that, besides the Business Premises Rent Tribunal (BPRT) case in which eviction orders were issued against the applicant, the applicant had in 2018 filed **Milimani CMCC No 44/2018** against the Late Wilfred Nyangweso.

12. Secondly, when the preceding application dated 22/2/2019 came up for hearing on 20/2/2020, the applicant applied to have it marked withdrawn on the ground that it had been overtaken by events.

13. Thirdly, counsel for the applicant stated during the hearing of the application that the plaintiff was evicted; his structures were demolished from the suit property; and the defendant was developing the suit property.

14. It does therefore appear from the record before me that the applicant seeks to injunct the defendant against developing the suit property from which he (the applicant) was evicted pursuant to an order made by the Business Premises Rent Tribunal (BPRT) in January 2019. I do not think, in light of the history of this matter, particularly the aspect of the eviction order issued by the Business Premises Rent Tribunal (BPRT); the subsequent demolitions; and the ongoing developments, the applicant can be said to have satisfied the ingredients in **Giella v Cassman Brown (1973) EA 358**. Secondly, given the above circumstances, the balance of convenience does not favour issuance of an injunctive order against a registered proprietor who has obtained an eviction order from the Tribunal; has enforced the order; and is developing the suit property. The view I take of this application is that, should the plaintiff's suit succeed, damages will be an adequate remedy. I will not say more.

15. In the end, the plaintiff's notice of motion dated 19/11/2020 is rejected for lack of merit. The plaintiff shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 31ST DAY OF MAY 2021

B M EBOSO

JUDGE

In the Presence of: -

Ms Wanjohi holding brief for Mr Hassan Abdi Defendnt

Court Assistant: June Nafula

NOTE

This ruling was to be delivered on 27/5/2021. It was not delivered because Milimani Environment and Land Court was closed on that day