



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC. CASE NO. 48 OF 2019**

**JOHN IRUNGU NJERI.....1<sup>ST</sup> PLAINTIFF**

**GEDFREY GICHUKI WAITHAKA.....2<sup>ND</sup> PLAINTIFF**

**FLORENCE AKINYI OTIENDE & 27 OTHERS *Suing as***

***representatives of* KIMASO SELF HELP GROUP.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**JAMII BORA BANK LIMITED.....1<sup>ST</sup> DEFENDANT**

**KISAJU VIEW PARK LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is before Court for determination is the Plaintiffs' Notice of Motion application dated the 29<sup>th</sup> May, 2019 brought pursuant to Section 1A, 63(e) of the Civil Procedure Act as well as Order 40 Rules 1(a) (b) & 4 and Order 51 Rule 1, 3, 4, 7 of the Civil Procedure Rules. The Plaintiffs seeks orders of temporary injunction restraining the Defendants either by themselves, their agents, employees or anyone under their authority from interfering, selling, subdividing charging or dealing with land parcel numbers KAJIADO/KISAJU/58 and KAJIADO/KISAJU/2995 hereinafter referred to as the 'suit lands'.

The application is premised on the grounds on the face of it and the supporting affidavit of JOHN IRUNGU NJERI the 1<sup>st</sup> Plaintiff herein, where he explains that on or about 2008, they entered into an Agreement with the 1<sup>st</sup> Defendant to acquire a loan of Kshs. 350,000/= in order to purchase house numbers N5/107, N5/023, N5/002, N5/059, N5/110, N5/119, N5/142, N5/147, N5/195, N5/213, N5/228, N5/245, N5/218, N5/036, N5/186, N5/011, N5/010, N5/160, N5/203, N5/602, N5/091, N5/224, N5/087, N5/140, N5/042, N5/037 and N5/205 all erected on the suit lands. He contends that the Plaintiffs signed acknowledgements of possession of the houses allocated to each one of them. Further, through the 1<sup>st</sup> Defendant, they each had savings account to which they diligently deposited some amounts towards the houses' mortgages. He claims some of them have cleared paying the mortgage loans and have been issued with clearance letters from the 1<sup>st</sup> Defendant. He avers that they have been receiving threatening letters from the 2<sup>nd</sup> Defendant indicating that they ought to pay outstanding payments on houses and failure to which the balance shall accrue at 10% per month and it shall repossess the houses as well as sell them to other buyers. He reiterates that the Plaintiffs have realized the 2<sup>nd</sup> Defendant is scheming to sell their houses to third parties erected on the suit lands without their knowledge including consent. Further, they are apprehensive that unless the injunctive orders sought are granted, the 2<sup>nd</sup> Defendant will proceed to repossess their houses as well as sell them to third parties and they are at risk of completely losing the said houses.

The 1<sup>st</sup> Defendant opposed the application and filed Grounds of Opposition dated the 2<sup>nd</sup> October, 2019 where it avers that it is a stranger to the Plaintiffs claim in the application as well as the suit; there is no existing loan agreement/s (or any agreement whatsoever) between the Plaintiffs and itself; there is no existing banking relationship between the Plaintiffs and itself; it has never issued the Plaintiffs with any demand letters; the Plaintiffs have not disclosed details of the alleged account and loan agreement with it; it has been wrongly enjoined in these proceedings; the application against it, is misconceived, mischievous, unmeritorious, frivolous and vexatious; the application is an abuse of the court process and should be dismissed with costs.

The application was canvassed by way of written submissions.

**Analysis and Determination**

Upon consideration of the Notice of Motion application dated the 29<sup>th</sup> May, 2019 including the respective affidavits and rivaling submissions, the only issue for determination is whether the Plaintiffs are entitled to orders of injunction pending the outcome of the suit.

The Plaintiffs in their submissions contended that they had established a prima facie case as the Defendants declined to deliver title documents to them without justification. Further, that they shall suffer irreparable harm as the 2<sup>nd</sup> Defendant has threatened to repossess the houses and sell them to third parties. They claim the balance of convenience tilts in their favour. To support their arguments, they have relied on the following decisions: **Mrao V First American Bank of Kenya Limited & 2 Others (2003) KLR 125**; **Simon Nganga Njoroge v Daniel Kinyua Mwangi (2016) eKLR**; **Nguruman Limited V Jan Bonde Nielsen & 2 Others (2014) eKLR**; and **Charter House Investment Ltd V Simon K Sang & Others Civil Appeal No. 315 of 2004**.

The 1<sup>st</sup> Defendant in its submissions reiterated its averments as per the Grounds of Opposition and insisted that the Plaintiffs had not demonstrated in the application any urgency in the matter or any threat of the suit lands being sold. It argued that for the Plaintiffs to be entitled to equitable relief, there has to be full disclosure of all the material facts and documentary evidence. It reiterated that it has wrongly been enjoined in the proceedings herein and shall be filing an application seeking to be struck off these proceedings.

The Plaintiffs have sought for orders of injunction against the Defendants and contend that the Defendants seek to sell the suit lands where their houses are situated, to third parties. The Plaintiffs claim they took loans and have fully repaid. Further, that the Defendants are threatening them. The 1<sup>st</sup> Defendant has opposed the said application contending that no documents were annexed to prove the Plaintiffs' averment. It is trite that injunctive reliefs suffice so as to protect the substratum of the suit. As to whether the Plaintiffs have established a prima facie case with a probability of success at the trial, I will rely on the principles established in the case of **Giella Vs Cassman Brown & Company (1973) EA 358** as well as the definition of a prima facie case as stated in the case of **Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) KLR 125**. From a perusal of the documents presented by the Plaintiffs, I note except for a Letter dated the 27<sup>th</sup> July, 2012 from the 1<sup>st</sup> Defendant confirming one Rose Anyango Owuor had completed her mortgage repayment, there are no Charge Documents nor demand letters from the 1<sup>st</sup> Defendant to prove the Plaintiffs' allegations. Further, I note the Plaintiffs annexed various acknowledgment of possession of their respective houses. There are various letters from the 2<sup>nd</sup> Defendant addressed to a few of the Plaintiffs namely Lucy Wanja Mwaura; John Irungu Ichagua; Jason Irungu Kuria and Stellamaris Nzioka which were written between November and December, 2018 requesting them to fully settle their respective loans within fourteen (14) days failure of which the 2<sup>nd</sup> Defendant would have no recourse but repossess the houses. From the averments in the supporting affidavit, noting that this suit was filed after the fourteen (14) days period, there is no indication from the said Plaintiffs whether they repaid the loans. Further, the Plaintiffs have not annexed any statement of accounts to confirm that they finalized repaying the loan. Based on the facts as presented including associating myself with the authorities cited, I find that the Plaintiffs have not demonstrated they have a prima facie case as against the 1<sup>st</sup> Defendant to warrant the orders sought. As for the 2<sup>nd</sup> Defendant, despite the fact that it did not deny the Plaintiffs' averments, however looking at the documents as presented, there is no conclusive proof of its intention to repossess the houses and sell to third parties as claimed. In the circumstance, I find that the Plaintiffs have indeed not established a prima facie case with a probability of success at the trial. In relying on the principles established in the case of **Nguruman Limited V Jan Bonde Nielsen & 2 Others (2014) eKLR**, I need not proceed to deal with the other two limbs on injunctions.

It is against the foregoing that I find the Plaintiffs Notice of Motion application dated the 29<sup>th</sup> May, 2019 unmerited and will disallow it.

Costs will abide the outcome of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2021**

**CHRISTINE OCHIENG**

**JUDGE**