



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 559 OF 2017

(FORMERLY MILIMANI ELC NO. 1211 OF 2015)

PAUL KINYANJUI NDUNGU (Suing as Legal representative of the Estate of

Teresiah Njambi Ndungu - deceased.....PLAINTIFF

VERSUS

JOYCE WARUGURU WAINAINA.....1ST DEFENDANT

JAMES NGANGA.....2ND DEFENDANT

COUNTY GOVERNMENT OF KAJIADO.....3RD DEFENDANT

RULING

The application before court is a Notice of Motion dated 11th November, 2016 filed by the Plaintiff brought pursuant to Article 10(2) (d) of the Constitution, Section 1A, 1B, 3A, and 63(e) of the Civil Procedure Act, Order 40 Rule 1, 4 and 10, Order 51 Rule 1 and 3 of the Civil Procedure Act and all the other enabling provisions of the Law. The application is based on the grounds that the Defendants have never filed a Defence despite being served. The subject dispute is before a competent forum which parties should be subject to and not initiate parallel proceedings meant to subvert the course of justice. That for reprieve and ensuring that there are no parallel or multiple proceedings there is need for court to issue an order of injunction protecting not only the Plaintiff's tenants but also the developments erected on the suit property. Further there would be no prejudice occasioned on the 1st Defendant since she has initiated an illegality which requires to be dealt with decisively. It could be in the interests of justice if the injunctive orders are granted to avert any acts that prejudice the suit property.

The application is supported by the affidavit of PAUL KINYANJUI NDUNGU the plaintiff herein where he deposes that he commenced the suit on 22nd December, 2015 and the 1st and 2nd Defendants entered appearance on 12th February, 2016 through the firm of Mangare Associates Advocates. He avers that the defendants have never filed a defence despite being served and the matter was scheduled for mention/directions on 30th November, 2016 arising from a request for judgement against the Defendants jointly and severally. He claims that on 7th November, 2016 the 1st Defendant in the company of the area Chief Ngaimurunya Location, Rongai came to the suit property and verbally notified tenants to vacate on or before 30th November, 2016 failure of which she would have them forcibly evicted. He reiterates that these utterances which amounted to a verbal notice intimated the 1st Defendant was owner of the suit land, yet there are iron sheet rental houses situated thereon where he collects rent and he would suffer irreparable damage if this is effected. He contends that the 1st Defendant intends to defeat the tenets of due legal process and she has the backing of the provincial administration. He confirms that he has instructed M/s Plight Properties to collect rent from the suit premises and the 1st Defendant is well aware

of the presence of tenants on the suit land and she is desirous of interfering with the quiet occupation and possession of the Plaintiff's tenants. He affirms that this suit is before a competent forum and there is need for court to grant injunctive orders protecting his tenants and the suit property.

All the Defendants never filed replying affidavits nor written submissions as directed by the Court. The Plaintiff filed his written submissions dated 12th June, 2017 where he reiterated his claim and averred that the 1st and 2nd Defendants have never in any way been connected to the suit property remotely or otherwise and have not produced any evidence to controvert the Plaintiff's claim of ownership of the suit land. He submitted that the suit property belongs to the deceased . The Plaintiff submits he has established a prima facie case.

Analysis and Determination

Upon perusal of the Notice of Motion dated 11th November, 2016 including the supporting affidavit and written submissions, I find that the only issue for determination at this juncture is whether the Plaintiff is entitled to the injunctive orders sought pending the outcome of the suit.

The principles for granting of temporary injunctions were settled in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358** as follows:

"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."

Bearing this principle in mind, it behoves this honourable court to interrogate whether the plaintiff/applicant has made out a prima facie case with a probability of success at the trial.

The Plaintiff who has instituted a suit as a personal representative of the late TERESIAH NJAMBI NDUNGU claims the suit land 99/ Residential - Kware Ongata Rongai Trading Centre (merged from 963 Residential - Kware Ongata Rongai Trading Centre and 476/ Residential - Kware Ongata Rongai Trading Centre) was allotted to the deceased in 1977 by the defunct Ol Kejuado County Council now Kajiado County Government. The Plaintiff contends the 1st and 2nd Defendants have interfered with the suit land and the tenants residing thereon. Further that the 1st Defendant in the company of a Chief threatened the tenants with eviction if they did not vacate on or before 30th November, 2016 failure of which she would have them forcibly evicted. The Plaintiff reiterates he collects rent from the suit land and would suffer irreparable loss and injury if the 1st and 2nd Defendants are not restrained from interfering with the suit land.

Since the claim by the Plaintiff was not controverted by the Defendants who failed to file Defence nor replying affidavit, and in line with the principles laid down in the case of **Giella versus Cassman Brown**, I find that the Plaintiff has established a prima facie case with a probability of success.

I allow the Plaintiff's notice of motion dated 11th November, 2016 with costs.

Dated signed and delivered in open court at Kajiado this 1st day of November, 2017.

CHRISTINE OCHIENG

JUDGE