



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. E164 OF 2021**

KIMUNU KANU.....PLAINTIFF/APPLICANT

VERSUS

VIRGINIA WANGUI MAINA.....1<sup>ST</sup> DEFENDANT/RESPONDENT

JOHN NGARE MAINA.....2<sup>ND</sup> DEFENANT/RESPONDENT

**RULING**

1. This is the Notice of Motion dated 12<sup>th</sup> May 2021 brought under article 40 of the Constitution, order 40 rule 1, 2, 3, 4, order 51 rule 1 of the Civil Procedure Rules, Section 3A and 63 of the Civil Procedure Act, and all other enabling provisions of the law.

2. It seeks orders:-

*1. Spent.*

*2. Spent.*

*3. That pending the hearing and determination of this suit, an order of injunction do issue restraining the respondents whether by themselves or their representatives, servants, agents, and/or assigns from howsoever demanding, collecting and/or receiving rent, and/or in any other manner whatsoever interfering with or otherwise dealing with the property known as Land Reference Number LR NO 209/4887/4 commonly known as Kiriaini building Nairobi without the express consent in writing from the applicant.*

*4. That pending the hearing and determination of this suit, the honourable court be pleased to appoint M/S Chabrin Agencies Ltd as the property manager cum rent collecting agent from the suit premises and the proceeds of the rent be shared equally between the applicant of one part and the respondents on the other part.*

*In the alternative the honourable court be pleased to issue orders and/or directions in respect to the rent collection and/or management of suit property as it may deem fit and fair.*

*5. That the costs of the this application be awarded to the applicant in any case.*

3. The grounds are on the face of the application and are set out in paragraphs (a) to (f)

4. The application is supported by the affidavit of Kimani Kanu, the plaintiff/applicant herein, sworn on the 12<sup>th</sup> May 2021.

5. The application is opposed. There is a replying affidavit sworn by John Ngare Maina, the 2<sup>nd</sup> defendant/respondent herein sworn on the 10<sup>th</sup> June 2021.

6. On the 10<sup>th</sup> June 2021 the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.

7. I have considered the Notice of Motion and he affidavit in support. I have considered the replying affidavit and the annexures, the written submissions filed and the authorities cited.

8. The issues for determination are:-

*(i) Whether the plaintiff's/applicant's application meets the threshold for grant of temporary injunction.*

*(ii) Who should bear costs of this application?*

9. The principles were laid down in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

10. It is the plaintiff's case that the defendants are collecting rent from the premises which are jointly owned by himself and the late Gabriel Maina.

11. The 1<sup>st</sup> defendant on the other hand contends that he did developments on this suit property single handedly. That at the applicant/plaintiff collects 40% of the rent while the defendants collect 60%.

12. The averments by the 1<sup>st</sup> defendant have not been controverted. In my view the issue of who did what development on the suit property will come out during the hearing of the main suit.

13. In the meantime parties are encouraged to continue with the present arrangement where the applicant collects 40% of the rent while the defendants collect 60% . that is to say the status quo prevailing be maintained. The upshot of the matter is that I find no merit in this application and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 29<sup>th</sup> day of July 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

Mr. Odogo for Mr. Kinyua for the Respondent

Phyllis - Court Assistant