



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 1220 OF 2016

1. MARY AKINYI OCHOLLA
2. JOAN JANE AWUOR OCHOLLA
3. ERICK ABOK WENDE
4. BENTA AKINYI OCHOLLA.....PLAINTIFFS

VERSUS

1. CHRISTINE ANYANGO OCHOLLA
2. EDWARD OTIENO OPIKO
3. DANIEL MWAURA
4. FLORENCE NYAMBURA
5. LANDS REGISTRAR (NAIROBI COUNTY).....DEFENDANTS

RULING

1. This is the Notice of Motion dated 18th December 2019 brought under order 40 rule 1, 2, 4 and order 51 of the Civil Procedure Rules 2010 and Section 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks orders

1. *Spent.*

2. *Spent.*

3. *Spent*

4. *That pending the hearing and determination of this suit the plaintiffs, the 1st and 2nd defendants in their individual capacities and/or through their agents, servants, workers and/or representatives be restrained by way of injunction from levying distress for the alleged rent arrears from the suit premises known as LR No Nairobi/Block 78/863.*

5. *Spent*

6. *That the plaintiffs, the 1st and 2nd defendants in their individual capacities and/or through their agents, servants, workers and/or representatives be restrained by way of an injunction from interfering with the quiet possession and enjoyment of the suit premises known as LR NO Nairobi/Block 78/863 pending hearing and full determination of this suit.*

7. *That pending the determination of this suit the 3rd and 4th defendants be allowed to deposit the rent due from the suit premises less expenses incurred in renovation reconstruction of the classes and replacement of the furniture and electronic that were damaged when the 1st and 2nd defendants agents invaded the suit premises on the 25th and 26th May 2019 in court or in a joint*

bank account to be opened in the joint names of the advocates representing the parties herein.

8. That pending the determination of this suit this honourable court be pleased to stay the proceedings the Business Premises Tribunal being Tribunal Cause Number 495 of 2019 Land Mark International Properties Limited vs Mutinda Muemi T/a City Church, Daniel Mwaura and Florence Nyambura T/A Kinderstart Academy and Safaricom.

9. That cost of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs 1 to 5.

4. The application is supported by the affidavit of Florence Nyambura, the 4th defendant herein, sworn on the 18th February 2019.

5. It appears the application is not opposed. On the 15th October 2020 Mr. Mariara for the 1st and 2nd defendants were present when the application was confirmed for hearing on 25th November 2020. There was no appearance for the plaintiff and 5th defendant though they had been served.

6. On the 15th October 2020 the court with the consent of the parties directed that the application be canvassed by way of written submissions.

7. The 3rd and 4th defendants' submissions are dated 14th January 2021.

8. It is the 3rd and 4th defendant's case that by an agreement of sale dated 10th July 2014, they bought the suit property from Glad Tidings Crusade. The said agreement was duly executed by three trustees of Glad Tidings Crusade. That they have satisfied the conditions set out in the case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358.**

9. It is further their case that they and their students will be forcefully evicted from the suit property if these orders are not granted. That the other parties who are not in occupation of the suit property shall suffer no prejudice. They pray that the application be allowed.

10. I have considered the pleadings, the notice of motion and the affidavit in support. I have also considered the submissions filed on behalf of the Applicants and the authorities cited. The issues for determination are:-

(a) Whether the plaintiffs'/applicants' application meets the threshold for grant of temporary injunction.

(b) Who should bear costs of the application?

11. At this juncture it is necessary to briefly examine the legal principles governing the applications of this nature. In an application for injunction the onus is on the applicant to satisfy the court that it should grant an injunction. 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.

12. In the case of **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557 Bosire J (as he then was)** held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

13. The 3rd and 4th defendants have demonstrated that there is a licence agreement between themselves and Glad Tidings Crusade in which with the 3rd and 4th defendants have been operating a school since 2012.

14. It is their case that they and the students will be prejudiced if they are forcefully evicted from the suit property.

15. I find that they have established a prima facie with a probability of success at the trial. As stated earlier the application is not opposed.

16. In conclusion, I find merit in application and the same is allowed in the following terms:-

(a) That a temporary injunction is hereby issued restraining the plaintiffs, the 1st and 2nd defendants in their individual capacities and/or through their agents, servants, workers and/or representatives from levying distress for the alleged rent arrears from the suit premises known as LR No. Nairobi/Block78/863.

(b) That temporary injunction is hereby issued restraining the 1st and 2nd defendants in their individual capacities and/or through their agents, servants, workers and/or representatives from interfering with the Applicants' quiet possession and

enjoyment of the suit premises known as LR NO Nairobi, block 78/863 pending the hearing and determination of this suit.

(c) That the 3rd and 4th defendants are hereby allowed to deposit the rent due from the suit premises in a joint bank account to be opened in the joint names of the Advocates representing the parties herein.

(d) That the proceedings at the Business Premises Rent Tribunal at Nairobi being Tribunal Case No 495 of 2019, Land Mark International Properties Ltd vs Mutinda Muemi t/a City Church, Daniel Mwaura and Florence Nyambura T/A Kindersart Academy and Saficom are hereby stayed pending the hearing and determination of this suit.

(e) That costs of this application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 23rd day of September 2021.

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiffs

No appearance for the 1st and 2nd Defendants

Ms Ndirangu for the 3rd and 4th Defendants

No appearance for the 5th Defendant

Steve - Court Assistant