



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 299 OF 2019**

**WILFRED GAKUYA WAWERU.....PLAINTIFF/APPLICANT**

**- VERSUS -**

**PETER KAMAU MUNENE.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**CHIEF LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This is the Amended Notice of Motion dated 18<sup>th</sup> December 2019 brought under Section 3A of the Civil Procedure Act, Order 40 Rule 1 and 2, Order 51 Rule 1 of the Civil Procedure Rules.

2. It seeks orders:-

**1. Spent.**

**2. This honourable court grants orders to pull down illegal structures that has been erected on the property Nairobi Block 110/782.**

**3. That an injunction be issued directing the defendant and or his agents or servants and or employees and or representatives to vacate the suit property to hand over immediate vacant possession of the same to the plaintiff.**

**4. That pending the hearing and determination of this application the defendant, his servant, employees and or agents be restrained from interfering with the suit property.**

**5. That the honourable court be pleased to grant in the instant a temporary injunction restraining the defendant himself, his agents, servants, representatives and succession in titles to stop further construction, entering the suit premises or sell until this application is heard and determined.**

**6. That the officer in charge Marurui post station or OCS Kasarani Police Station be directed to assist the plaintiff in ensuring that the orders are carried out peacefully.**

**7. That the defendant do pay the costs of this application.**

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

4. The application is supported by the affidavit of Wilfred Gakuya Waweru, the Administrator, herein sworn on the 18<sup>th</sup> December 2019.

5. The application is opposed. There is a replying affidavit sworn by Peter Kamau Munene, the 1<sup>st</sup> defendant/respondent on the 2<sup>nd</sup> December 2019. It appears he 2<sup>nd</sup> and 3<sup>rd</sup> defendants did not file any responses.

6. On the 10<sup>th</sup> December 2019, the court with the consent of parties directed that the application be canvassed by way of written submissions.

7. The Plaintiff'/Applicant's submissions are dated 30<sup>th</sup> October 2020 while the 1<sup>st</sup> Defendant's/Respondents are dated 17<sup>th</sup> December 2020.

8. I have considered the Notice of Motion and the Supporting Affidavit. I have also considered the Replying Affidavit, the Written Submissions filed on behalf of the parties and the authorities cited. 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. 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 application 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 prima facie case. I am guided by the above authorities.

10. It is not in doubt that the 1<sup>st</sup> defendant is the registered owner of Nairobi/Block 110/782. He claims to have been in possession of the same since 2016. The 1<sup>st</sup> defendant will have an opportunity at the trial to demonstrate how he acquired title to the suit property.

11. The plaintiff/applicant on the other hand contends that the suit property is one of the assets for distribution to the beneficiaries to the Estate of the late Anthony Gakuya Waweru in Nairobi Succession Cause No 1368 of 2010 which is yet to be concluded.

12. I am of the view that the prayers sought in the Amended Notice of Motion cannot be granted at this stage without hearing the 1<sup>st</sup> defendant on how he acquired the suit property. It is however important that the suit property is preserved pending the hearing and determination of this suit.

13. In essence, I find no merit in this application and I decline to grant the orders as sought, save that the 1<sup>st</sup> defendant should not sell and/or dispose of the suit property until the suit is heard and determined. In essence the status quo ought to be maintained. The costs of this application do abide the outcome of the main suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2021**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Ms Maina for Ms Wangari for the Plaintiff

Mr. Kirwa for the 1<sup>st</sup> Defendant

Steve - Court Assistant