



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 551 OF 2016

LINNET WAIRIMU MUKUHA.....1ST PLAINTIFF

GRACE WAMBUI MUKUHA.....2ND PLAINTIFF

LUCY WANJIRU NYAGA (Suing as the administrator of
the estate of JOSEPH NYAGA WAMBITI).....3RD PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAKURU.....1ST DEFENDANT

PHARIS NDUNGU CHEGE.....2ND DEFENDANT

GURSHARN SINGH.....3RD DEFENDANT

CHIEF LAND REGISTRAR,

NAIVASHA LAND REGISTRY.....4TH DEFENDANT

NAIVASHA INDUSTRIAL COMPLEX LTD.....5TH DEFENDANT

RULING

1. This ruling is in respect of the 2nd and 3rd defendants' Notice of Motion dated 7th June 2019. The following orders are sought in the application:

1. ...

2. ...

3. *THAT this Honourable Court be pleased to issue a temporary order restraining the 1st and 2nd plaintiffs/respondents by themselves, their agents, their auctioneers, bailiffs, servants, workers and any other persons or firms from levying distress, attaching, seizing or in any way attaching or interfering at all with the applicants' and his family's peaceful use, possession and occupation of all those premises currently standing on Naivasha Municipality Block 6/117 pending the determination as to ownership of land parcel No. Naivasha Municipality Block 6/ 117 in this matter.*

4. *THAT costs of this application be borne by the 1st and 2nd plaintiffs/respondents in any event.*

2. The application is supported by an affidavit sworn by Pharis Ndungu Chege, the 2nd defendant. He deposed that the 1st and 2nd plaintiffs have attempted to levy distress against him yet he is not their tenant and that he therefore needs the orders sought to ensure justice and fairness.

3. The plaintiffs opposed the application through a replying affidavit sworn by Linnet Wairimu Mukuha, the 1st plaintiff. She deposed that

the plaintiffs herein had filed Nakuru Rent Restriction Tribunal Case No. 33 of 2007 against the 2nd defendant and that the tribunal had made an order on 25th September 2017 that rent be paid. That the 2nd defendant sought stay of the order pending hearing and determination of appeal in Nakuru High Court Civil Appeal No. 137 of 2017 and the application was dismissed on 18th December 2018. She further deposed that after delivery of the ruling in the appeal, the 2nd defendant herein filed Nakuru Chief Magistrate Court Misc. Civil Application No. 2 of 2019 seeking similar orders as those sought in the current application and that the said application was dismissed on 31st May 2019. She added that the application is an abuse of court process and that the applicant does not want to pay rent.

4. The application was canvassed through written submissions. The applicants argued that the 2nd defendant is the registered proprietor of the suit property and that he is therefore not liable to pay rent. In their submissions, the plaintiffs reiterated that the application is an abuse of the court's process in view of the sequence of events that they narrated in the replying affidavit.

5. I have carefully considered the application. The applicants seek an interlocutory injunction. To succeed, they must satisfy the test in **Giella -vs- Cassman Brown & Co. Ltd [1973] E.A 358**. They must establish a *prima facie* case with a probability of success. Even if they succeed on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct and logical hurdles which the applicants are expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**.

6. The applicants urge the court to grant an injunction to protect them from distress for rent. I have however read the supporting affidavit and nowhere in it do I see any specific threat. No particular date of a proclamation of distress is cited. In the words of the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others** (supra), to establish a *prima facie* case, an applicant "*must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion*". I have not seen those ingredients in the application before the court. In short, the applicant has not established a *prima facie* case. That is enough to dispose of the application.

7. The foregoing notwithstanding, the respondents have argued that the application is an abuse of the court process. I agree with the respondents. From the material placed before the court, I am satisfied that the plaintiffs herein filed Nakuru Rent Restriction Tribunal Case No. 33 of 2007 against the 2nd defendant and that the tribunal made an order on 25th September 2017 that rent be paid. The 2nd defendant sought stay of the order pending hearing and determination of appeal in Nakuru High Court Civil Appeal No. 137 of 2017 and the application was dismissed on 18th December 2018. I am further satisfied that after delivery of the ruling in the appeal, the 2nd defendant herein filed Nakuru Chief Magistrate Court Misc. Civil Application No. 2 of 2019 seeking similar orders as those sought in the current application and that the said application was dismissed on 31st May 2019. Injunctive orders are equitable relief. A party seeking such relief must come to court with clean hands. The applicants' hands are totally soiled and an injunction would not issue in any event.

8. In view of the foregoing discourse, Notice of Motion dated 7th June 2019 is devoid of merit. It is dismissed with costs to the plaintiffs.

Dated, signed and delivered in open court at Nakuru this 5th day of March 2020.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Waiganjo for the plaintiffs/respondents

Mr Magata holding brief for Mr Konosi for the 1st defendant/respondent

Mr Karanja Mbugua for the 2nd and 3rd defendants/applicants

No appearance for the 4th defendant/respondent

No appearance for the 5th defendant/respondent

Court Assistants: Beatrice & Lotkomo