



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. NO. 1200 OF 2013

GEORGE MWANGI KAMAU..... PLAINTIFF

VERSUS

CECILIA WANJIKU KURIA..... DEFENDANT

RULING

Coming before me for determination is the Notice of Motion dated 7th October 2013 in which the Plaintiff/Applicant seeks for orders of a temporary injunction restraining the Defendant from trespassing or alienating Plot No. 25 on L.R. No. 6845/67 (hereinafter referred to as the “Suit Plot”) pending the hearing and determination of this Application and suit and that the OCS Kayole Police Station be ordered to enforce compliance of the court orders. The Plaintiff/Applicant also seeks for orders that costs of this Application be costs in the cause.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff/Applicant, George Mwangi Kamau, sworn on 7th October 2013 in which he averred that he bought the Suit Plot from the Defendant and paid the purchase price in full after which the same was transferred to him. He produced the Sale Agreement between him and the Defendant dated 9th June 2000. He further averred that as evidence of the said transfer, he was issued with a plot ownership certificate. He produced a plot ownership certificate CNo. 25 in the name of the Defendant dated 27th April 1994 and another plot ownership certificate CNo. 6845/67 in his name dated 22nd December 2000. He further averred that he took possession of the Suit Plot and constructed temporary structures thereon pending the issuance of the title thereto. He then averred that the Defendant has now trespassed upon the Suit Plot, pulled down the structures thereon and commenced construction alleging to be the owner thereof. He stated further that the Defendant’s actions are unlawful, unjustified and aimed at disposing off his property and should be stopped.

The Application is unopposed.

In deciding whether to grant the interlocutory injunction, I wish to refer to and rely on the precedent set out in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of

success. Secondly, an interlocutory injunction will not be normally 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.”

Has the Plaintiff/Applicant made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

Has the Plaintiff/Applicant established a prima facie case? This heavily depends on whether the Plaintiff/Applicant has been able to convince this court that he is indeed the proprietor of the Suit Plot. The conventional way of proving this is by production to this court of valid title documents in respect of the Suit Plot. The documents that the Plaintiff has produced as evidence of ownership of the Suit Plot are a plot ownership certificate issued by Urutagwo Mwiruti Women Group, a Sale Agreement between him and the Defendant and a receipt for Kshs. 7,000/- described as payment for transfer of the Suit Plot issued by the same group dated 21st December 2000. The Plaintiff/Applicant has already stated that he does not as yet have the title document for the Suit Plot. In the absence of controverting evidence from the Defendant and from the documentation produced by the Plaintiff/Applicant, I am convinced that he has proved to this court, on a *prima facie* basis, that he is the proprietor of the Suit Plot and has therefore established a prima facie case with a probability of success at the main trial.

Does an award of damages suffice to the Plaintiff/Applicant? Land is unique and no one parcel can be equated in value to another. The value of the Suit Plot can be ascertained. However, it would not be right to say that the Plaintiff can be compensated in damages. I hold the view that damages are not always a suitable remedy where the Plaintiff has established a clear legal right or breach. See **JM GICHANGA versus CO-OPERATIVE BANK OF KENYA LTD (2005) eKLR**.

Being not in doubt, I see no reason to determine in whose favour the balance of convenience tilts.

Arising from the foregoing, I hereby allow the Application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI THIS 14th DAY OF March 2014

MARY M. GITUMBI

JUDGE