

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL AND LAND DIVISION
ELC SUIT NO. 296 OF 2012

HARRISON GICHARU NG'ANG'A.....PLAINTIFF

VERSUS

JOHN NJOROGE MURAGE.....DEFENDANT

RULING

The Plaintiff has moved the court by way of a Notice of Motion dated 28th May 2012 brought under Order 40 Rule 1 and 4 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. He is seeking a temporary prohibitory injunction against the Defendant in relation to the suit property herein, namely RUIRU/KIU BLOCK 6/1362. The Plaintiff claims that he is the *bona fide* allottee of the suit property, and that the Defendant has trespassed thereupon and fenced off the said property.

Both the Plaintiff and Defendants claim to be members of a land buying company known as Githurai Tinganga Company Ltd which was the owner of a parcel of land known as L.R 8867 and which was subdivided to a number of plots, including the suit property. The Plaintiff has brought as evidence a letter from the Ministry of Lands and Settlement dated 30/10/2008 addressed to him on the subdivision scheme approval for L.R 8867, and the issue of a lease to him with respect to the suit property upon his acceptance of the conditions therein.

He further claims that he has since signified his acceptance by paying the legal fees and other charges specified in the said letter, and brought evidence of a copy of a receipt dated 17/5/2012 issued to him by the Department of Lands for Kshs 1,810/= with respect to fees paid in relation to the suit property. He also brought evidence of another plot that had been allocated to him by Githurai Tinganga Company and for which he has been issued a lease.

The Defendant on the other hand claims that he was allocated six plots by Githurai Tinganga Company, and that he and other members filed a suit against the directors of the said company in Nairobi High Court Civil suit No. 3836 of 1994, after disputing the boundaries of the plots allocated to them. Further, that the said suit is still not finalized as the said company was prematurely dissolved, and that as a result the area he occupies was left out and was never surveyed and still remains so. He annexed a copy of a survey plan as evidence. He also stated that he could not recall the Plaintiff being a member of Githurai Tinganga Company, and denied having interfered with anybody's plot.

The Plaintiff's Notice of Motion was heard on 23rd January 2013, and parties relied on written submissions filed in court. The Plaintiff's Counsel in submissions dated 30th May 2013 reiterated the argument made in the foregoing. The Defendant's Counsel in his submissions dated 24th April 2013 in addition to the arguments made hereinabove, also pointed out that the Plaintiff's Notice of Motion referred to two parcels of land namely RUIRU/KIU BLOCK 6/1392 and RUIRU/KIU BLOCK 6/1362, and should therefore be dismissed.

Having considered the arguments made by the parties, I note with regard to the Defendant's submissions on the different parcels of land stated in the Plaintiff's Notice of Motion, that the prayer under consideration is prayer 3 of the said Notice of Motion which is seeking a temporary injunction pending the hearing and determination of the suit herein. This prayer specifically states that the injunction being sought is with respect to the property known as RUIRU/KIU BLOCK 6/1362. The parcel of land described as RUIRU/KIU BLOCK 6/1392 is referred to in prayer 2 of the said Notice of Motion, which is seeking a temporary injunction pending the hearing and determination of the application. This prayer is already spent as the application has been heard and the Defendant's objections have therefore been raised late in the day.

In addition the supporting and further affidavits by the sworn by Plaintiff all refer to RUIRU/KIU BLOCK 6/1362, as do the supporting documents he has produced in evidence. More importantly the Plaintiff dated 28th May 2012 which is the reference point for the Plaintiff's Notice of Motion and claim is seeking orders in relation to RUIRU/KIU BLOCK 6/1362. This court will therefore proceed with a determination of the Plaintiff's Notice of Motion in relation to the property known as RUIRU/KIU BLOCK 6/1362.

I in this regard find that the Plaintiff has demonstrated his interest to the property known RUIRU/KIU BLOCK 6/1362 by way of the offer of the issue of a lease to him with respect to the said property by the Commissioner of Lands, and the payments he has made in this respect. The Defendant on the other hand has shown no proof of allocation of, or of his entitlement to the said property. In addition it is apparent from the letter from the Ministry of Lands and Settlement produced in evidence by the Plaintiff that the suit property was the result of a sub-division of LR 8867. The Plaintiff has therefore met the requirements stated in **Giella vs Cassman Brown & Co Ltd, (1973) EA 358** as to the grant of a temporary injunction as he has shown that he has a *prima facie* case. This court cannot consider the issue of whether damages would be an adequate remedy to the Plaintiff as the Defendant has not brought any evidence of his entitlement to the suit property.

I accordingly allow the Plaintiff's Notice of Motion dated 28th May 2012 and hereby order that the Defendant whether by himself, his servants, agents or anybody acting under his directions be and is hereby restrained from entering, taking possession, constructing on, selling or in any manner dealing with the property known as RUIRU/KIU BLOCK 6/1362 pending the hearing and determination of this suit or until further orders.

The costs of the said Notice of Motion shall be in the cause.

Dated, signed and delivered in open court at Nairobi this 9th day of July, 2013.

P. NYAMWEYA

JUDGE