



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND CASE NO. 131 OF 2013

KENNETH KIMATHI NKONGE.....PLAINTIFF/APPLICANT

VERSUS

PURITY GATUMWA ATAYA.....DEFENDANT/RESPONDENT

R U L I N G

This application is dated 12.10.2012 and it was stated on its face that it was premised upon Order 40 Rules 1 & 2, Order 51 Rule 1 of the Civil Procedure Rules and Section 68 of the Land Registration Act No. 3 of 2012. It seeks Orders:

1. **THAT the application be certified urgent and the same be heard ex- parte in the 1st instance.**
2. **THAT pending inter-parties hearing of this application, an order of temporary injunction be issued, restraining the Defendant from evicting the plaintiff from the Residential house on L.R. No. NTIMA/IGOKI/6546 or from denying the plaintiff free entry, user, occupation and enjoyment of the residential house on L. R. NO.NTIMA/IGOKI/6546 or from selling, charging, leasing or in any other way dealing with L. R. No. NTIMA/IGOKI/6546.**
3. **THAT pending the hearing and determination of this suit, an order of temporarily injunction be issued, restraining the Defendant from evicting the plaintiff from the residential house on L. R. NO. NTMA/IGOKI/6546 or from denying the plaintiff free entry, user, occupation and enjoyment of the Residential house on L.R. No. NTIMA/IGOKI/6546 or from denying the plaintiff free entry, user, occupation and enjoyment of the residential house on L. R. NO. NTIMA/IGOKI/6546 or from selling, charging, leasing or in any other way dealing with L. R. No. NTIMA/IGOKI/6546.**
4. **THAT an order of inhibition be issued, prohibiting any kind of dealings over L. R. NO.NTIMA/IGOKI/6546, pending the hearing and determination of this suit.**
5. **THAT costs of this application be provided for.**

The applicant supported the application with his supporting affidavit and grounds a to e elaborated in the application.

The matter was heard ex-parte by Hon. J. A. Makau, J., on 16.10.2012, and prayers for injunction and inhibition were granted on interim basis.

The application was heard Inter- Partes on 27.5.2013.

For the applicant, it was submitted that there was no contention regarding the fact that the suit land **NTIMA/IGOKI/6546** is registered in the respondent's name. The main dispute regarded who constructed a 4 bedroomed house standing on the land. It was the plaintiff's claim that he had incurred over 4.5. million Kenya Shillings when the respondent and the plaintiff were cohabiting as man and wife, although they were not formally married. As proof of this cohabitation the applicant referred the Court to two birth certificates of twin children who were the issues of their cohabitation. The applicant also referred to a health Insurance Membership Card for the applicant issued by the respondent's employer. He contended that he had established how he had come to be on the suit land. He explained that the 4 bedroomed house he had constructed on the suit land was meant to be a matrimonial home for himself, the respondent and their children.

He said he had received notice from the respondent's advocate informing him that he was a tenant and he should vacate the house he occupied. There was also a demand for an unspecified rent. As the plaintiff and the respondent had agreed to put up the subject house, and they had lived therein up to 2005 when the respondent was transferred to Maua, the demand for him to vacate the subject house was malicious and meant to take away his investment.

He supported his arguments by referring to an annexed bundle of receipts and records of payments relating to the construction of the house. He also stated that the defendant had not produced a single receipt to show that she had spent anything on the construction of the house.

The applicant argued that since he lived on the suit land and was not a trespasser, in the interest of justice, he should be allowed to continue staying on the suit land and in the house he had developed.

The respondent denied the claims of the applicant but admitted that the applicant was the father of their 2 children. She denied that the applicant had cohabited with her on the suit land and added that the house was only completed in 2009 and, therefore, they could not have cohabited there before then. She also said that as the plaintiffs' claim was for a sum of Kshs.4,194,735, the prayer for Injunction could not be sustained.

The respondent in denying that the applicant had built the subject house produced copies of bank statements showing her source of financing her construction of her house. She claimed that receipts whose copies were produced by the applicant were generic and the hand written notes also produced by the applicant had been tailor made for this case. She also argued that the respondent had not disputed that she had the financial means to pay the sum claimed by the applicant, if the applicant won the suit eventually.

The respondent submitted that the applicant had not shown that he would suffer irreparable loss. If the prayer for injunction was granted it would subject the respondent to hardship. On the other hand if the applicant proved that he had spent the amount of money he claimed to have spent on constructing the house, then the order he will get from the Court is for compensation to the tune of that amount.

Finally, the respondent conceded that the order of inhibition could be granted.

Many of the issues raised herein can only be determined after the hearing of the main suit. Principles regarding grant of injunctions were eloquently elaborated in the case of **GIELLA V. CASSMAN BROWN [1973] E.A.358**. One of those principles makes it clear that the injunction will not normally be granted unless the applicant might otherwise suffer irreparable damage. Having looked at all the averments and authorities provided by the parties, I find, that the applicant's claim, if he eventually proves his case can be compensated by way of monetary damages. As the respondent has conceded to the prayer for a grant of inhibition, I will not deal with this issue any further.

In the circumstances, it is ordered:

1. Prayer 2 for an order of injunction is denied and dismissed.
2. Prayer 4 for an order of inhibition is granted
3. Costs be in the cause.

Delivered, dated and Signed in Open Court at Meru this 4th day of July, 2013 in the presence of

Mwirigi present for applicant's

Kiambi present for Respondent

P. M. NJOROGE

JUDGE