



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 687 OF 2011**

**JANE WAMBUI NJOROGE..... PLAINTIFF**

**VERSUS**

**JUDITH WANGUI.....1<sup>ST</sup> DEFENDANT**

**MR. NYAGA CHAIRMAN**

**DANDORA JUA KALI BLOCK G.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Plaintiff is seeking injunction orders from this court against the Defendants to restrain them from interfering with the suit property herein namely Plot No. B27 Dandora Jua Kali Block G. She also wants the court to order that the OCS Dandora Police Station oversees the compliance of this court's orders. These prayers are in a Notice of Motion filed herein by the Plaintiff dated 1<sup>st</sup> December 2011.

The Plaintiff claims to be the owner of the suit property and that the Defendants have trespassed on the suit property by claiming, trespassing, wasting and starting to dispose of it. The Notice of Motion is supported by an affidavit sworn by the Plaintiff on 2<sup>nd</sup> December 2011 and a further affidavit sworn on 26<sup>th</sup> March 2012. The Plaintiff states therein that on 3<sup>rd</sup> Saturday 2011 the 1<sup>st</sup> Defendant brought two people in a car to view the suit property with a view to selling it. She claimed that she is the owner of the suit property, having purchased the property from one Esther Wambui, and that the ownership by Esther Wambui had been verified and confirmed by the 2<sup>nd</sup> Defendant who was the chairman of Dandora Jua Kali Block G .

The 1<sup>st</sup> Defendant opposed the Notice of Motion and stated in a replying affidavit and further affidavit she swore on 25 January 2012 and 5<sup>th</sup> April 2012 respectively, that she bought the suit property on the 7<sup>th</sup> October 1997 from one Peter K. Waiti on behalf of Esther W. Kiuna who was his wife at a consideration of Kshs.170,000/=. She attached the sale agreement they entered into and a copy of a Bankers Cheque for the said amount of consideration as evidence of payment. Further, that after the sale she was given the original letter of allotment in the names of Esther W. Kyuna, and that it was duly endorsed and signed by Peter K. Waiti the then chairman of Dandora Jua Kali Block G as having been transferred to the 1<sup>st</sup> Defendant on 7/10/1997.

The 1<sup>st</sup> Defendant also attached copies of a clearance certificate for the suit property issued to her by the chairman of Dandora Jua Kali Block G dated 17/6/2011, and of a letter dated 9<sup>th</sup> June 2011 from the

Director of Housing Development of the City Council of Nairobi cancelling the plot card issued to the Plaintiff with respect to the suit property.

The parties were directed to file written submissions, which they relied upon for the ruling herein. The Plaintiffs' counsel in submissions dated 21<sup>st</sup> May 20i2 reiterated the arguments made in the foregoing and relied on the sale agreement the Plaintiff entered into with Esther Wambui dated 17/01/2011, a clearance certificate and identity card as an allottee issued to the Plaintiff by the chairman of Dandora Jua Kali Block G with respect to the suit property, and a plot card for the suit property issued to her by Nairobi City Council dated 17.6.2011. These documents were in the Plaintiff's list of documents dated 1<sup>st</sup> December 2011 and filed in court on 2<sup>nd</sup> December 2011.

The Plaintiff's counsel argued that the documents produced in evidence by the 1<sup>st</sup> Defendant had no relevance to the suit property as her sale agreement cites plot B37 B as the subject matter, and the letter of allotment issued to Esther Kyuna that was attached is with respect to a plot C -155 in Dandora Terminus Jua Kali Artisans. Further, that the reported cancellation of the said plot card in the letter produced by the 1<sup>st</sup> Defendant dated 9<sup>th</sup> June 2011 had no evidential value in the absence of a witness statement or affidavit from the relevant official of the Nairobi City Council. Lastly, it was submitted that the Plaintiff had established a *prima facie* case with a high probability of success having established her legal right to the suit property.

The 1<sup>st</sup> Defendant's counsel filed submissions dated 24<sup>th</sup> June 2013 and after reiterating the arguments made herein argued that the Plaintiff had not shown any proof of forgery with respect to the letter from the City Council of Nairobi revoking her plot card. Further, that during the regularization of the allotment of the suit property, the letter of allotment for plot c-155 was given a number plot B-37 and later plot B-27 in the name of Esther Wambui Kyuna. Lastly, that the Plaintiff had not met the necessary requirements for the grant of an injunction as stated in the case of **Giella vs Cassman Brown & Co Ltd, (1973) EA 358**, as her whole suit is premised on falsehood and concealment of material facts.

I have carefully read and considered the pleadings and arguments made by the parties herein. The issue for determination is whether the Plaintiff has met the requirements stated in **Giella vs Cassman Brown & Co Ltd, (1973) EA 358** as to the grant of a temporary injunction. These are that the applicant must establish a *prima facie* case, and that he or she would suffer irreparable loss which may not be compensated by an award of damages. If the Court finds that the two requirements are not satisfied, it may decide an application on the balance of convenience.

The first question I must therefore answer is whether the Plaintiff has established a *prima facie* case. The Plaintiff has provided evidence of a plot card issued to her by the City Council of Nairobi with respect to the suit property, and other documents issued to her in this regard by the chairman of Dandora Jua Kali Block G. This is sufficient evidence to establish her interest in the suit property, and I therefore find that she has established a *prima facie* case. I have noted that the said plot card was purported to be revoked by the City Council of Nairobi, but this is an issue that can only be determined with certainty after further evidence at full trial.

I also noted the inconsistencies in the documentation produced by the 1<sup>st</sup> Respondent as regards the description of the property she claims, which is stated in the said documents to be plot b37 and plot C155. She will need to call further evidence on the explanation given of the processes of regularization of the allocation of the suit property that resulted in the plots she bought being the same as the suit property, as this is not self-evident from the evidence she has produced.

I however appreciate that as the 1<sup>st</sup> Defendant has provided some evidence of her interest relating to the suit property in the form of the clearance certificate from the 2<sup>nd</sup> Defendant, and there is a need to preserve the suit property pending the hearing and determination of the suit herein.

The Plaintiff's Notice of Motion dated 1<sup>st</sup> December 2011 is accordingly allowed to the extent of the following orders:

1. The Defendants by themselves, their agents, servants be and are hereby restrained from trespassing upon, selling transferring, charging, disposing of, wasting or in any other way interfering with the Plaintiff's possession and occupation of plot No. B 27 Dandora Jua Kali Block G situated within Nairobi, pending the hearing and final determination of this suit or until further orders of this Court.
2. The Plaintiff shall not sell, transfer or in any other manner dispose of the plot No. B 27 Dandora Jua Kali Block G situated within Nairobi, pending the hearing and final determination of this suit or until further orders of this Court.
3. The Officer Commanding Station Dandora Police Station shall supervise and ensure compliance with the orders given herein.
4. The costs of the Plaintiff's Notice of Motion dated 1<sup>st</sup> December 2011 shall be in the cause.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this \_\_\_\_8<sup>th</sup>\_\_\_\_ day of \_\_\_\_October\_\_\_\_, 2013.

**P. NYAMWEYA**

**JUDGE**