



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 725 OF 2016**

**HABIBA NYAMBURA ABDULLAHI.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**SHEIKH ABDULLAHI MOHAMMED.....DEFENDANT/RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 26<sup>th</sup> February 2018 brought under Section 1A, 1B, 3A and 63 (e) of the Civil Procedure Act, Order 51 rule 1, 2 and 11 of the Civil Procedure Rules and all other enabling provisions of the law.

2. It seeks order:-

*(1) Spent*

*(2) That a temporary injunction do issue restraining the defendant whether by himself, his servants, agents and/or otherwise whomsoever from leasing, letting and/or renting out the suit property to third parties pending the hearing and determination of this suit.*

*(3) That this honourable court do make an order for eviction of all those parties already renting out the suit property pending the hearing and determination of this suit.*

*(4) Spent*

*(5) That the officer commanding police division Buruburu Nairobi County, to ensure that the orders of the Hon. Court are complied with till further orders.*

*(6) Any other or further relief this court may deem fit and just to grant in the circumstances.*

*(7) That costs of this application be provided for.*

3. The grounds are on the face of the application and are set out in paragraphs a to g.

4. The application is supported by the affidavit of Habiba Nyambura Abdullahi, the plaintiff/applicant herein sworn on the 26<sup>th</sup> February 2018.

5. The defendant/respondent was duly served by way of substituted service by advertisement in the Standard Newspapers of 7<sup>th</sup> December 2018. He filed no response. The application is therefore unopposed.

6. I have considered the pleadings, the Notice of Motion, the affidavit in support and the annexures. The principles were set out in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Limited vs First American Bank of Kenya Limited & 2 Others [2003] KLR 125** the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

7. I have gone through the plaintiff's/applicant's documents and I find that she has demonstrated that he was the allottee of the suit plot by the City Council of Nairobi. I am convinced that she has demonstrated a prima facie case with a probability of success at the trial.

8. In the case of **Kenleb Cons Ltd vs New Gatitu Service Station Ltd & Another** 1990 KLR 557 Bosire J (as he then was) held that:-

***“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”***

I am satisfied that the plaintiff/applicant herein deserves the kind of protection.

9. I am also satisfied that she has demonstrated that she is likely to suffer irreparable loss that cannot be compensated by an award of damages if these orders are not granted.

10. All in all, I find merit in this application and I grant the orders sought namely:-

***(a) That a temporary injunction be and is hereby issued restraining the defendant/respondent whether by himself, his servants, agents, and/or otherwise whomsoever from leasing, letting and/or renting out the suit property to third parties pending the hearing and determination of this suit.***

***(b) That an order is hereby issued directing all third parties already in the suit property to vacate pending the hearing and determination of this suit.***

***(c) That the officer commanding police division Buruburu Nairobi County to ensure compliance of the above orders.***

***(d) That costs of this application do abide the outcome of the main suit.***

It is so ordered.

**Dated, signed and delivered in Nairobi on this 22<sup>ND</sup> day of JANUARY 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant