



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1065 OF 2015

LUCY WAIRIMU KIBERA.....PLAINTIFF/APPLICANT

=VERSUS=

ANTONY KIMANI MWANGI.....DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 27th October 2015 brought under Order 40 Rules 1(a) (b) 4, of the Civil Procedure Rules 2010, Section 1A, 1B, 3A and 63 (e) of the Civil procedure Act and all enabling provisions of the law.

2. It seeks order:-

(1) Spent

(2) Spent

(3) That this Honourable Court be pleased to issue an order of injunction restraining the defendant/respondent, either by himself, his agents, servants, representatives and or any other person claiming under him from occupying, trespassing or in any other way interfering with the plaintiff/applicant's ownership of the parcel of land known as LR No. Ruiru/Kiu Block 8/1144 in Nairobi, pending the hearing and determination of the suit, and the Officer Commanding Kasarani Police Station to ensure compliance.

(4) 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 f.

4. The application is supported by the affidavit of Lucy Wairimu Kibera the plaintiff/applicant herein sworn on the 27th October 2018.

5. The application is opposed. There is a replying affidavit sworn by Antony Kimani Mwangi, the defendant/respondent sworn on the 17th November 2015.

6. On the 14th September 2016 the court directed that the application be canvassed by way of written submissions.

The plaintiff's/applicant's submissions

7. The plaintiff/applicant is the registered owner of LR NO. Ruiru/Kiu Block 8/1144. She has a title deed. The plaintiff's claim is valid. An order of status quo ought to be issued pending the hearing and determination of the suit. The plaintiff/applicant has satisfied the grounds for grant of temporary injunctions. She prays that the application be allowed.

The defendant's/respondent's submissions

8. The plaintiff/applicant has no title to the suit land. The documents at the Thika Land Registry indicate that the defendant is the owner as he has annexed certificate of official search and a copy of the register. The defendant/respondent has been in occupation since he purchased the property. The membership certificate shows that he plaintiff/applicant was allocated Parcel No 1145 issued on 10th January 1989. The plaintiff/applicant has not established a prima facie case with a probability of success at the trial. She has also failed to demonstrate that

damages is not an adequate remedy if these orders are not granted. He has put forward the cases of **Giella vs Cassman Brown & Co. Ltd; Nyeri HCCC No 11 of 2014 Nairobi Kiru Line Services Ltd vs County Government of Nyeri & 2 Others**

9. I have considered the pleadings, the notice of motion, the affidavit in support and the annexures. I have also considered the replying affidavit and the annexures, the written submissions of counsel and the authorities cited. The issues for determination are:-

(i) Whether the plaintiff's/applicant's application meets the threshold for grant of temporary injunction and who should bear costs?

10. At this juncture it is necessary to briefly examine the legal principles governing the application of this nature. In an application for injunction the onus is on the applicant to satisfy the court that it should grant an injunction. The principles were set down in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Ltd vs First American Bank of Kenya Limited & 2 Others [2003] KLR 125** the Court of Appeal stated what amounts to a prima facie case.

11. It is the plaintiff's/applicant's case that she is the registered owner of the suit property. The title deed was issued on 6th December 2013. She has annexed a receipt No. 061 for Kshs 35,000 issued by Mwana Mukia Housing Cooperative Society. The same is dated 11th November 2013 and it is for payment of title deed. The same is marked "LMK2". She has also annexed a share certificate issued by the said cooperative society. It is for plot No. 1145. However I note that the same is cancelled and written 1144. There are other alterations on the said share certificate. It is not clear who did the handwritten alternations.

12. The defendant/respondent on the other hand has annexed a title deed in the name of Grace Wanjiru Njuguna issued on 15th October 2010. He bought the suit plot from grace Wanjiru Njuguna. He was issued with a title deed on 23rd July 2013 before the plaintiff/applicant was issued.

13. In the case of **Njenga vs Njenga (1991) KLR 401 Bosire J** (as he then was) held that :-

"an injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles".

I am not persuaded by the facts presented by the plaintiff/applicant that she deserves the orders sought.

14. In the case of **Kenleb Cons Ltd vs New Gatitu Services 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 not satisfied that the plaintiff/applicant deserves this kind of protection. I find that she has failed to establish a prima facie case with a probability of success at the trial.

15. I also find that the plaintiff/applicant has failed to demonstrate that she will suffer irreparably if the orders are not granted. She has not demonstrated that damages would not be an adequate remedy. I rely on the authority of **Ooko vs Barclays Bank of Kenya Ltd [2002] KLR 394**.

16. The upshot of the matter is that I find no merit in this application and the same is dismissed. The cost of the application do abide the cost of the main suit. Consequently the interim orders earlier granted are hereby vacated.

It is so ordered.

Dated, signed and delivered in Nairobi on this 7TH day of FEBRUARY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant