

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 342 OF 2017

ELISHA K. BUSIENEL.....1ST PLAINTIFF

TILMWAI LOGISTICS LIMITED.....2ND PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU.....1ST DEFENDANT

NATIONAL BANK OF KENYA LIMITED.....2ND DEFENDANT

RULING

The plaintiffs have come to court under Notice of Motion dated 10.10.2017 seeking orders that the 1st respondent be restrained from interfering with the quiet possession of property Eldoret Municipality/Block 13/79, a house located at Elgon View Staff house Estate No. SHI-13/79 pending hearing and determination of the suit. He prays for costs.

The facts of the matter according to the plaintiffs are that the plaintiff/applicant has been enjoying possession of the property since 2006. The plaintiffs have never paid rent to the defendants. The suit property has been under the quiet possession of the 2nd plaintiff.

The applicant submits that he has a prima facie case with likelihood of success due to fact that he has been in continued occupation of the property without paying rent and has legitimate expectation to the property in renewal of the lease. The 2nd plaintiff is a *bonafide* purchaser for value.

The plaintiffs argue that they are likely to suffer irreparable harm if an order of injunction is not granted as the 2nd defendant has been receiving rent from the 2nd defendant. According to the plaintiff, the balance of convenience tilts towards granting the orders of injunction.

The 1st defendant argues that the suit property is public property owned by the 1st defendant and therefore, the 2nd defendant lacked capacity to dispose the property to the 2nd plaintiff. According to the 1st defendant, the 1st plaintiff is a defaulting tenant to the 1st defendant who owes over Kshs.783,000 as at 31.8. 2017. According to the 1st defendant, the suit property belongs to the 1st defendant and is in his possession.

I have perused the application with the supporting affidavit, the replying affidavit with the submissions of both counsel and do find that the property in dispute is comprised of a leasehold for a term of 99 years from the year 1909. The term expired on 1.10.2008, and upon expiry of the term, the property reverted to the government and became public land. I have not seen any application for renewal of lease or extension of term. However, the lessee before the expiry of lease had a legitimate expectation that the lease to the property would be renewed in his name or the lease term would be extended. These are issues to be considered in the main hearing.

This court finds that the plaintiff has not come out clearly to demonstrate whether the lease was renewed and or extended. This will be addressed during the main hearing of the suit.

The upshot of the above is that there is doubt as to whether the plaintiff has a prima facie case with a likelihood of success as the lease term expired. There is a letter dated 8th September, 2005 by the Commissioner of Lands extending the lease subject to payment of enhanced annual rent of Kshs.47,200 and approval fees of Kshs.5000. It is not clear whether the same was paid. Other than sentimental value, the plaintiff has not demonstrated irreparable loss if the injunction is not granted.

This is a matter to be determined on a balance of convenience. I do direct that the status quo be maintained. However, the rent in respect of the premises to be paid in a joint account opened in the names of the advocates on record in a reputable bank of choice of the parties. The joint account to be opened within 45 days from today. Costs in the cause.

Dated and delivered at Eldoret this 11th day of April, 2019.

A. OMBWAYO

JUDGE