



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO. 497 OF 2018

MARIAM ADAM AHMED.....PLAINTIFF/APPLICANT

VERSUS

SHARIFF FOREX BUREAU COMPANY LTD.....DEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant filed a Notice of Motion dated 19th November, 2018 in which she sought the following orders:-

1. Spent

2. Spent

3. That this Honourable Court be pleased to issue a temporary injunction restraining the Defendant, its agents, servants and/or employees from evicting the Plaintiff/Applicant and/or trespassing, alienating, leasing, selling, distressing for rent and/or committing acts and/or otherwise interfering with the Plaintiff's/Applicant's possession enjoyed by the Plaintiff/Applicant, her agents, servants, tenants and/or employees over all that property known as L.R No. 209/13284/2 pending the hearing and determination of this suit.

4. That the Officer Commanding Langata Police Station to ensure compliance of the orders granted herein.

5. That the costs of this Application be provided for.

2. The Defendant/Respondent is the registered owner of LR No. 209/13284/2 (suit property). On 6th November 2018, the Respondent through Kingpin Auctioneers distrained for rent against the Applicant. The Applicant moved to Court where she filed a suit against the Respondent in which she sought a permanent injunction against the Respondent restraining it from interfering with the suit property. She also prayed for a declaration that she had acquired the suit property through adverse possession.

3. The Applicant contends that she moved into the suit property in the year 2000 and that she has since lived in the suit property and has even constructed a two bedroomed house within the suit property which she has rented out. The Applicant denies that there is any landlord/tenant relationship between her and the Respondent.

4. The Applicant argues that on 6th November 2018, the Respondent proclaimed for rent arrears to the tune of Kshs.1,200,000/= which she states has no basis. She further states that she has lived in the suit property with her family without any interruption since 2000. The Applicant contends that she has done tremendous improvements to the houses within the premises she has been living with her children who know that the house belongs to her.

5. The Respondent opposed the Applicant's application through a replying affidavit sworn on 17th December, 2018 by Jafar Shariff Omar. The Respondent contends that the suit property is owned by the Respondent which has two directors. One of the directors of the Respondent is the Applicant's husband Mohamed Omar Shariff who owns 20% shares in the Respondent Company whereas Jafer Shariff Omar who is a brother to the Applicant's husband owns 80% shares in the Respondent Company.

6. The Respondent contends that the Applicant's husband had been allowed to stay in the suit property by the Respondent and was paid commission for selling other properties owned by the Respondent. When the Applicant's husband was asked to pay rent, he refused and when the Respondent asked the Auctioneers to distrain for rent, he wrote a letter to the Auctioneers stating that the suit premises belonged to him and not the Respondent.

7. The Respondent states that the Applicant has come to Court with unclean hands and has failed to disclose material facts. The Respondent argues that the Applicant cannot claim adverse possession in a property where the husband has a stake. The Respondent states that the application is an abuse of the process of the Court which ought to be dismissed.

8. The Applicant's husband had been asked to sign a tenancy agreement but he refused to do so and that the Respondent has its offices in one of the upper floors of the suit premises. The Respondent contends that it is Mohammed Omar Shariff who has prompted his wife to file this claim.

9. In a further affidavit sworn by the Applicant, the Applicant contends that the deponent of the replying affidavit has no resolution from the Respondent authorising him to swear the replying affidavit which ought to be expunged. The Applicant further argues that the Respondent is a company capable of conducting its own affairs. She denies ever receiving or seeing the notices from advocates asking her husband to sign a tenancy agreement.

10. The Applicant states that Jaffer Shariff Omar is trying to coerce her husband into relinquishing his interest in some properties and that the two brothers are embroiled in Court battles over ownership of properties. She cites ELC Case No. 720 of 2017 which is in relation to LR No. 36/11/14 and Nairobi CMCC No. 7837 of 2017 in relation to LR No. 209/11114(IR 71823). She further argues that the affidavit in opposition to her application is only meant to mislead the Court into believing the blatant lies by Jaffer Shariff Omar.

11. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions filed by the parties herein. The only issue for determination is whether the Applicant has disclosed a case to warrant issuance of an injunction. To begin with, an injunction is an equitable remedy and whoever comes to Court to seek it has to come with clean hands.

12. In the instant case, the Applicant filed this application without disclosing material facts. She did not disclose that she was wife of one of the directors of the Respondent Company and that her husband has a stake in the Respondent Company. In her claim, she is claiming the suit property through adverse possession. Before an injunction can be granted, an Applicant has to demonstrate that she or he has a *prima facie* case. Considering the materials presented before this Court, I do not think that Applicant has disclosed a *prima facie* case.

13. The Applicant contends that the deponent of the replying affidavit has no resolution from the company authorising him to act for the Company. The Respondent Company has only two directors. The two directors are embroiled in property disputes. One cannot expect the two to sit and pass a resolution authorising one to pursue a case like this one. The Applicant is not only guilty of material non-disclosure but has not disclosed a *prima facie* case warrant issuance of an injunction. I therefore find that the Applicant's application lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 27th day of June, 2019.

E.O.OBAGA

JUDGE

M/s Njagi for Mr. Kinari for Applicant.

Court Assistant Hilda