

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 204 OF 2019

FRANCIS COLLINS OMINDE.....PLAINTIFF

=VERSUS=

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES.....DEFENDANT

RULING

The plaintiff brought this suit against the defendant on 18th June, 2019 seeking a declaration that he is the bona fide proprietor of all that parcel of land known as L.R. No. NRB/BLK 21190/00/065/1 (“the suit property”) and a permanent injunction restraining the defendant from trespassing on or interfering with his quiet possession of the suit property.

Together with the plaint, the plaintiff filed an application by way of Notice of Motion dated 18th June, 2019 seeking a temporary injunction to restrain the defendant from trespassing on, entering or allowing others to enter or interfere with the plaintiff’s quiet possession of the suit property pending the hearing and determination of the suit. The application was brought on the ground that the plaintiff purchased the suit property from the defendant on 3rd June, 2010 and paid the purchase price in full which payment the defendant had acknowledged. The plaintiff averred that strangers had been calling him and telling him that they had been engaged by the defendant to carry out survey and related works on the suit property. The plaintiff averred that he was apprehensive that the defendant had an intention of defeating his proprietary rights in the suit property.

The application was served upon the defendant but the defendant did not respond to the same. When the application came up for hearing on 29th October, 2019, Mr. Makori who appeared for the plaintiff urged the court to allow the application as prayed since the application was not opposed. I have considered the application together with the affidavit filed in support thereof. The principles upon which this court exercises its discretion on applications for temporary injunction are well settled. An applicant for a temporary injunction must establish a prima facie case against the respondent with a probability of success and must also demonstrate that he stands to suffer irreparable harm if the order is not granted. See, *Giella v. Cassman Brown & Company Ltd.* [1973] E.A 358. From the documents annexed to the plaintiff’s affidavit, I am satisfied that the plaintiff purchased the suit property from the defendant. The plaintiff has contended that he is apprehensive that the defendant intends to dispossess him of the suit property.

The onus was upon the plaintiff to satisfy the court that his apprehension that the defendant intended to dispossess him of the suit property was reasonable and had basis. In his affidavit in support of the application, the plaintiff stated that strangers were calling him and telling him that they had been engaged by the defendant to enter the suit property and carry out survey and related works. The plaintiff stated that one of the said strangers was a lady by the name Beatrice who told the plaintiff that she was working for a company known as Rhyden International. The plaintiff has not placed any evidence before the court showing that the said strangers had been sent by the defendant. There is also no evidence that before coming to court the plaintiff had contacted the defendant over the alleged calls that he was receiving from strangers to confirm whether indeed the strangers had been sent by the defendant.

I am not satisfied from the material before me that the plaintiff has established a prima facie case against the defendant with a probability of success. I find the plaintiff’s apprehension that the defendant intends to dispossess him of the suit property unreasonable and baseless. The plaintiff has not demonstrated any wrong doing on the part of the defendant. I am also not persuaded that the plaintiff will suffer irreparable harm if the injunction sought is not granted. The plaintiff’s complaint is over phone calls from strangers who claim to have been engaged by the defendant to carry out survey on the suit property. The plaintiff is at liberty to ignore the phone calls and also to deny the said callers access to the suit property until the defendant who is alleged to have sent the callers formally communicates to the plaintiff if at all it has any intention of subdividing the suit property.

The upshot of the foregoing is that the plaintiff’s Notice of Motion application dated 18th June, 2019 has no merit. The application is dismissed with costs to be in the cause.

Delivered and Dated at Nairobi this 30th day of October, 2019

S. OKONG’O

JUDGE

Ruling read in open court in the presence of:

Ms. Kioko h/b for Mr. Muli for the Plaintiff

N/A for the Defendants

C.Nyokabi-Court Assistant