



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 423 OF 2018**

FESTUS NGOWA SHAURI.....1<sup>ST</sup> PLANTIFF/APPLICANT

HARRY KIRITU GITHAE.....2<sup>ND</sup> PLANTIFF/APPLICANT

NURTA HASSAN SHIRE.....3<sup>RD</sup> PLANTIFF/APPLICANT

MOHAMED ABDIKER.....4<sup>TH</sup> PLANTIFF/APPLICANT

=VERSUS=

KHADIJA KURIA.....DEFENDANT/RESPONDENT

**RULING**

1. This is the Notice of Motion dated 28<sup>th</sup> September 2018 brought under order 1 rule 10(2), order 40 rules 1, 2 and 3 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act, and all enabling provisions of the law.

2. It seeks orders

***1. Spent.***

***2. Spent.***

***3. That pending the hearing and determination of this suit a temporary injunction do issue restraining the defendants, whether by herself, her agents, employees and/or servants from evicting the plaintiffs and/or trespassing, alienating, leasing, selling, transferring, charging, constructing and/or committing acts of waste on LR NO. 209/10912.***

***4. That the 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 Festus Ngowa Shauri one of the plaintiffs/applicants herein sworn on the 28<sup>th</sup> September 2019.

5. The application is opposed. There is a replying affidavit sworn by Khadija Kuria, the defendant/respondent herein sworn on the 12<sup>th</sup> February 2019.

6. On the 14<sup>th</sup> February 2019 the court directed that the application be canvassed by way of written submissions.

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

***(i) Whether the plaintiffs'/applicants' application meets the threshold for grant of temporary injunction.***

***(ii) Who should bear costs?***

8. 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 out in the precedent setting case of **Giella Cassman Brown & Co. Ltd [1973] EA 358. In the case of Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125** the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

9. 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.”*

10. The plaintiffs have failed to demonstrate that they were allocated the suit land on or that they are the registered proprietors. They have not demonstrated that they deserve this kind of protection. They claim that the letter of allotment was issued to them is misplaced. The defendant/respondent on the other hand has a judgment in her favour delivered by Hon. Lady Justices K. Bor on 13<sup>th</sup> December 2017 which she was declared the owner of LR No. 209/10912, the suit property herein. This was in ELC 28 of 2016. The plaintiffs herein have not told the court if the said judgment has been set aside.

11. I find that the plaintiffs have failed to establish a prima facie case with a probability of success at the trial.

12. The upshot of the matter is that I find no merit on this application and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 9<sup>th</sup> day of October 2019.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Ms Chepkonga for Lakicha Advocate for the Plaintiffs

Mr. J. P. Machir for Ms Muhiro Advocate for the Defendant

Kajuju - Court Assistant