



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL CASE NO. 960 OF 2016**

**SILAS MUGERIA.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**ESTHER GACHERI MUGERIA.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**=VERSUS=**

**JOHN MWANGI KINGORI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**NAIROBI CITY COUNTY.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This is the notice of motion dated 8<sup>th</sup> August 2016 brought under Section 1A, 1B, 3 and 3A, 63(c) of the Civil Procedure Act Cap 21 (Laws of Kenya), Order 40 Rules 1, 2, 3 and 10, order 51 rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.

2. It seeks orders:-

*(1) Spent.*

*(2) Spent.*

*(3) That pending hearing and determination of this application and suit, an order be issued against the defendants/respondents restraining the defendants/respondents by themselves, their employees, servants, agents, successors, assignees or any one claiming through or under them from taking any action that is detrimental to the plaintiffs/applicants in respect of the suit property known as Plot No. 209/4401/711.*

*(4) That the Officer Commanding Jogoo Road Police Station ensures compliance with the orders sought above.*

*(5) 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 1 to 6.

4. The application is supported by the affidavit of Silas Mugeria, the 1<sup>st</sup> plaintiff/applicant sworn on the 8<sup>th</sup> August 2016.

5. The application is opposed. There is a replying affidavit sworn by John Mwangi Kingori the 1<sup>st</sup> defendant/respondent sworn on the 19<sup>th</sup> October 2016 and a further affidavit sworn on the 18<sup>th</sup> November 2016. There is also a replying affidavit sworn by Benson Ndegwa Gichohi, an Administrative Officer, Lands in the Nairobi City County sworn on the 11<sup>th</sup> February 2019.

6. On the 24<sup>th</sup> September 2018, the court directed that the application be disposed by way of written submissions.

7. I have considered the notice of motion dated 8<sup>th</sup> August 2016, the affidavits in support and in reply. I have considered the submissions made on behalf of the parties and the authorities cited. The issues for determination are:-

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

*(ii) Who should bear costs?*

8. It is the plaintiffs'/applicants' submissions that they are the registered proprietors of LR NO. 209/4401/711 having bought the same from the original allottees Susan Tanui, Sarah Mengich and Jonathan Ole Nalango. The 1<sup>st</sup> defendant on the other hand states that he is the owner of LR NO. 209/4401/737. It is clear that these are two distinct plots.

9. 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 vs Cassman Brown & Co. Ltd [1973] EA 358**. In the case of **Mrao Limited 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.

10. 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

11. I also find that since they are claiming a different suit property from the 1<sup>st</sup> defendant's they have failed to establish a prima facie case with a probability of success at the trial. Evidence will be tendered during the hearing to confirm whether these are distinct plots or the same.

12. In conclusion, I find no merit in 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 19<sup>th</sup> day of December 2019.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiffs

Ms Okoth for Mr. Chege for the 1<sup>st</sup> Defendant

Mr. Gituma for the 2<sup>nd</sup> Defendant

Kajuju - Court Assistant