



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 79 OF 2018

PETER KIAMBATI KARIUKI.....PLAINTIFF

VERSUS

ELIJAH K. K. CHALAITA.....1ST DEFENDANT

NAKURU HOUSING & DEVELOPMENT CO. LTD.....2ND DEFENDANT

NAKURU DISTRICT LAND REGISTRAR.....3RD DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 16th February 2018 seeking the following orders:

1. Spent.

2. Spent.

3. That pending the hearing and determination of this suit, a temporary order of injunction do issue restraining the defendants by themselves, their servants or agents otherwise whosoever claiming under them from entering, threatening to enter and or interfering with the plaintiff's peaceful occupation of the land known as Nakuru Municipality Block 23/540 measuring approximately 0.0911 hectares in any manner whatsoever and the defendants be restrained from issuing and or preparing another title in favour of any other person.

4. The costs of this application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff. He deposed that he bought the parcel of land known as Nakuru Municipality Block 23/540 (the suit property) on 12th January 2016 at a consideration of Ksh.8, 500, 000 and was issued with a Certificate of Lease in respect thereof on 28th January 2016. He annexed a copy of the Certificate of Lease as PKK6. On 13th February 2018, he learnt that the defendants were in the process of preparing another title in respect of the suit property in favour of the 2nd defendant. He obtained a copy of an unsigned Certificate of Lease dated 24th March 2016 and prepared in favour of the 2nd defendant. He annexed it as PKK7. He thus urged the court to grant the orders sought.

3. Despite being served with the application, the defendants neither filed any response to it nor participated in its hearing. Consequently, counsel for the plaintiff submitted that the application was unopposed and urged the court to allow it in terms of prayer 3 thereof.

4. I have considered the application and submissions of counsel. In an application seeking an interlocutory injunction, the applicant must satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. He must establish a *prima facie* case with a probability of success. Even if a *prima facie* case is established, an injunction would not to issue if damages can adequately compensate him. Finally, if the court is in doubt as to the answers of the above two tests then the court would determine the matter on a balance of convenience. As was recently held by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, all the three **Giella** conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. Though the plaintiff has in the application also sought an injunction restraining the defendants from entering, threatening to enter and or interfering with the plaintiff's peaceful occupation of the land, no evidence of any threats by the defendants to enter or interfere with the land was availed.

5. In the present case, the applicant's case that he is the registered proprietor of the suit property and that the defendants are in the process of

issuing a new title in respect of the suit property to the 2nd defendant is not challenged. From the documents exhibited by the applicant, I am satisfied that he has established a prima facie case with a probability of success. I do not think damages would adequately compensate him.

6. In the circumstances, I grant an injunction restraining the defendants by themselves, their servants or agents from issuing and or preparing another title in favour of any other person in respect of the land known as Nakuru Municipality Block 23/540 pending the hearing and determination of this suit.

7. Costs to the plaintiff/applicant.

Dated, signed and delivered in open court at Nakuru this 16th day of March 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Makori holding brief for Mr. Machage for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistants: Gichaba & Lotkomoi