



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 382 OF 2017**

**CALEB MIHESO IJAMI.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**MIRAFLORES APARTMENTS LTD & ANOTHER.....DEFENDANTS**

**RULING**

1. The Plaintiff/Applicant filed a Notice of Motion dated 9<sup>th</sup> June 2017, seeking the following orders:-

**1. Spent**

**2. Spent**

**3. That a temporary injunction to issue restraining the defendants jointly and severally by themselves and or by their principals, agents, employees, servants and any other person acting under their authority from trespassing remaining in occupation, entering, occupying, dealing and possession and use of all that parcel of land known as LR No. 2/344 I.R No.17804 situate at Nairobi County, Kilimani area pending hearing of the suit herein.**

**4. That the officer Commanding Police Division (OCPD) Kilimani Police Station be compelled to supervise and maintain order and ensure compliance of Order 2 and 3 herein.**

**5. That the Honourable Court be pleased to fast-track proceedings in this matter in light of the great importance, its import and the sanctity of title, land tenure and the integrity of the persons entrusted with keeping records.**

**6. The cost of this application be borne by the Defendant/ Respondent.**

2. The applicant contends that he is the registered owner of LR No.2/344 (suit-property) which he acquired in 1996 through allotment. Sometime in 2016 the applicant learnt that some unknown persons were conspiring with the National Land Commission to destroy the original documents in respect of the suit property and introducing forged ones in a bid to disposses him of the suit property. He asked his Advocates who engaged the National Land Commission over the documents but the National Land Commission did not help.

3. On 7<sup>th</sup> June 2017 a group of goons led by a person of Asian origin went to the suit property and chased away his caretakers. He reported the incident to Kilimani Police Station where he was shown a bundle of documents from the Ministry of Lands indicating that someone had claimed that the suit property belonged to the first defendant who alleged that original documents were lost and the loss had been advertised in the Gazette Notice. The applicant further contends that what is happening is a conspiracy between the first and second respondents who want to take away the suit property from him. He therefore seeks for protection from the court to safeguard his constitutional right to property.

4. The first respondent opposed the applicant's application based on grounds of opposition dated 27<sup>th</sup> June 2017 and filed in court on the same date as well as a replying affidavit sworn on 3<sup>rd</sup> October 2017. The first respondent acquired the suit property through indenture made on 31<sup>st</sup> December 1990 and sale agreement dated 21<sup>st</sup> June 1990 between it and *Caleb Akwera aka Caleb Habilson Akwera*. The indenture was registered on 2<sup>nd</sup> September 1991. The first respondent took possession of the suit property until the applicant invaded the suit property claiming that he was the lawful owner of the same.

5. The first respondent went to the Land Registry to carry out a search. The records indicated that it was no longer the registered owner of the suit property. The records had been tampered with and the original deed file was missing. The records indicated that the applicant had been

registered as owner of the suit property and that a transfer to one Kimemia Eddy Peter Ndungu had been made.

6. The first defendant's title document is with the bank having been deposited there as security for a loan taken in 2007. The suit property had all along been under the Government Land Act but recent records show that it is under Registration of Titles Act (Repealed). The first respondent noted that the changes to ownership were purportedly made based on surrender of title to the Government which is not the case. The first respondent contends that the registration of the suit property in the name of the applicant is a fraudulent scheme meant to disposses the first respondent of the suit property.

7. The Chief Land Registrar has since arrested the machinations of the applicant. A deed file has been re-opened and the illegal transactions put on hold. The first respondent prays that the applicant's application be dismissed as the applicant has not demonstrated any prima facie case to warrant the orders sought.

8. I have considered the applicant's application as well as the opposition thereto by the first respondent. I have also considered the submissions by the applicant. Though the first respondent had been given time to file its submissions, the same had not been filed as at 25<sup>th</sup> January 2018 when this matter was fixed for ruling or thereafter. This being an application for injunction, the court has to consider whether the applicant has established a case to warrant issuance of injunctive orders.

9. The principles for grant of a temporary injunction were set out in the celebrated case of **Giella Vs Cassman Brown & Co.Ltd (1973)358 EA**. One of the principles for grant of an injunction is that the applicant has to demonstrate that he has a prima facie case with probability of success. A prima facie case was described in the case of **Mrao Vs First America Bank of Kenya Ltd & 2 others (2003) KLR 125** as follows:-

***“ A prima facie case in a civil application includes but is not confined to a “ genuine and arguable case”. It is a case on which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.***

10. The applicant contends that he is the registered owner of the suit property. The first respondent also contends that it is the rightful owner of the suit property only that the applicant has attempted to take away the property by interfering with the records at the Lands Registry. I have examined the documents presented by the disputants in this case. At this stage, I am not expected to closely examine those documents and make a finding as to which of them are genuine or not. My task now is to establish whether the applicant has made out a prima facie case to warrant issuance of injunction. In **Nguruman Limited Vs Jan Bonde Nelson & 2 Others Civil Appeal No 77 of 2012** , the Court of Appeal had this to say:-

***“We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it , the person applying for an injunction has a right which has been violated or is threatened with violation. Positions of parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case”.***

11. Having evaluated the materials placed before me in light of the decisions herein above, I find that the applicant has not demonstrated that any of his rights have been violated as to call for grant of injunction. I find no merit in the applicant's application which is dismissed with costs to the first respondent.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 19<sup>th</sup> day of April 2018.**

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of date and time of delivery of Ruling.

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**