



**REPUBLIC OF KENYA**

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

**E.L.C CASE NO.13 OF 2018**

**CHEPKOSGEI LILY BIEGON.....PLAINTIFF**

**VERSUS**

**ONESMUS KIPROTICH MUTAL.....DEFENDANT**

**RULING**

1. By a Notice of Motion dated 19<sup>th</sup> February, 2018, the Plaintiff filed an application seeking the following prayers:

a) Spent

b) Spent

c) *That a temporary injunction do issue restraining the defendant by himself, his agents, servants, assignees, representatives or nominees from remaining on or continuing in occupation, entering, selling, alienating, building any structure, disposing of, interfering with the tenants or in any other way interfering with all that land comprised in L.R No. KERICHO KIPCHIMCHIM/6423 pending the hearing and determination of the suit herein*

d) *Any other necessary directions*

2. The application is predicated upon the grounds stated in the Notice of Motion and the plaintiff's affidavit sworn on the 19<sup>th</sup> February 2018. In the said affidavit the plaintiff depones that she is the registered owner of all that parcel of land known L.R No KERICHO/KIPCHIMCHIM/6423. The plaintiff further depones that by a sale agreement dated 17<sup>th</sup> February 2017 she sold a portion of the suit land measuring 75 feet by 100 feet to the defendant at a consideration of kshs. 550,000. The defendant paid a sum of Kshs. 100,000 and was to settle the balance by 31<sup>st</sup> March 2017 but he failed to do so. In anticipation of the balance of the purchase price, the plaintiff gave the defendant vacant possession of one room out of the rental houses on the suit premises.

3. She depones further that instead of paying the balance of the purchase price, the defendant who is an Administration Police officer has started threatening the plaintiff, harassing the other tenants on the plot and has evicted one of them and unless restrained by this court the plaintiff will suffer irreparable loss and she risks losing her tenants hence her rental income.

4. The application is opposed by the defendant's Replying affidavit sworn on the 13<sup>th</sup> March 2018 in which he claims that the plaintiff has refused to accept part payment of the balance. He denies that he has threatened the plaintiff, harassed or evicted her tenants. He claims that the plaintiff is frustrating him as she has refused to hand over vacant possession of the suit premises.

5. The only issue for determination is whether the applicant has met the conditions for the grant of an interlocutory injunction.

6. In order for the court to exercise its discretion in granting injunctive relief the applicant must meet the conditions set out in the case of **Giella V Cassman Brown & Company Ltd 1973 EA 358** which are as follows:

*“First, the applicant must show that he has a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by damages. Thirdly, if the court is in doubt, it will decide it will decide the application on a balance of convenience.”*

7. A further test for the grant of an injunction has emerged from the approach adopted by Ojwang J (as he then was) in the case of **Amir Suleiman V Amboseli Resort Limited (2004) eKLR** when he relied on the English case of **Films Rover International 1986 3 All ER 772** where the court stated as follows:

*“A fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong”.*

8. The first issue that the court must determine is whether the plaintiff has established a *prima facie* case with a probability of success.

9. In the case of **Mrao V First American Bank of Kenya Limited (2003) eKLR** Bosire JA (as he then was) stated as follows:

*“A prima facie case is... one 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 role of a Court faced with an interlocutory application for injunction is not really to make final findings but to weigh the relative strength of the parties' cases. This was so held in the case of **Mbuthia Vs Jimba Credit Corporation Ltd (1988) KLR1**, where the court stated as follows: -

***“in an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties' cases,”***

11. The applicant has annexed a certificate of official search which clearly shows that she is the registered owner of the suit premises. She has also attached a sale agreement between her and the defendant in respect of the suit premises. The defendant does not deny that he still owes the plaintiff some money being the balance of the purchase price yet he seems to be insisting on being given vacant possession of the suit premises. Even though he denies having threatened and harassed the plaintiff's tenants, the photos attached to the plaintiff's affidavit show that there is some destruction to the water tank and one of the tenant's items have been thrown out.

12. In her affidavit, the plaintiff has stated that she is a widow who solely depends on income from the suit premises for her livelihood and medication and if the defendant is not restrained from his unlawful acts she is likely to lose her tenants and will thus be deprived of her only source of income as a result of which she will suffer irreparable loss.

13. From the material placed before me so far, I am satisfied that the applicant has met the threshold for a *prima facie* case as defined in the Mrao case (supra). I am also satisfied that if the orders sought are not granted, the plaintiff shall suffer irreparable loss. In the circumstances I am of the view that she has satisfied the conditions set out in the case of **Giella V Cassman Brown & Company Limited**.

14. Accordingly, I grant a temporary injunction in the following terms:

a) A temporary order of injunction is hereby granted restraining the Defendant/Respondent his agents, servants, assignees, representatives or nominees from remaining on or continuing in occupation, entering, selling, alienating, building any structure, disposing of, interfering with the tenants or in any other way interfering with all that land comprised in L.R No. KERICHO KIPCHIMCHIM/6423 pending the hearing and determination of the suit herein.

b) The costs of this application shall be in the cause.

**Dated, signed and delivered at Kericho this 23<sup>rd</sup> day of May, 2018.**

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**J.M ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Koech for the Plaintiff/Applicant

2. N/A for the Defendant/Respondent