



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 297 OF 2015**

**REDEMPTA WACERA.....PLAINTIFF**

**VERSUS**

**ANN CLARA WANJIRU.....DEFENDANT/RESPONDENT**

**R U L I N G**

1. On 16/4/2015, Redempta Wacera (**the plaintiff**), brought a Notice of Motion application dated 15/4/2015 seeking an interlocutory injunction restraining the defendant together with her agents and servants against collecting rent, trespassing on, accessing, alienating and/or interfering with her possession of House No. H 129 situated in Umoja 1, Nairobi. She contends that she purchased the suit property from the defendant in March 1996 at a purchase price of Ksh 500,000, took possession of the suit property in 1996 and she has been staying in the suit property since then.
2. The plaintiff contends that despite having paid full purchase price, the defendant has failed/refused to transfer the suit property to her. She further contends that the defendant has been interfering with her quiet possession and enjoyment of the suit property and has threatened to evict her from the suit property.
3. The defendant opposes the application through a replying affidavit sworn on 5/5/2015. She contends that the plaintiff is her younger sister whom she allowed to stay in the suit property together with their mother and their other five siblings as their Nairobi common family home which she availed for use by the entire family for many years. She contends that in 1993, she needed money and she offered to sell the suit property to the plaintiff; that the plaintiff only managed to pay Ksh 238,000 out of the sum of Ksh 650,000 which she had asked her to pay as purchase price. She contends that the intended sale to the plaintiff was therefore unsuccessful. She further contends that she never entered into a formal agreement for sale; and that the agreement attached to the plaintiff's affidavit is a forgery.
4. The defendant further contends that she informally informed the plaintiff that the sum of Ksh 238,000 paid by her would be converted into rent on account of her using the house for a long period.
5. I have considered the application together with the rival affidavits and submissions. I have also considered the principles governing exercise of jurisdiction to grant interlocutory injunctive orders.
6. The single question for determination in this application is whether the plaintiff has satisfied the criteria for grant of a temporary injunction. That criteria was laid down in **Giella v Cassman Brown & Company Limited (1973) EA 358**. The plaintiff was required to demonstrate a prima facie case with a probability of success, and further demonstrate that she would stand to suffer irreparable injury which cannot be adequately compensated by an award of damages if the injunctive order is not granted. Were the court to be in doubt, the application is to be determined on a balance of convenience.
7. There is common ground that there was an agreement for sale pursuant to which the defendant agreed to sell and the plaintiff agreed to purchase the suit property. The plaintiff contends that the agreement was made in writing and duly executed by the parties. She has annexed a copy of the agreement in which the agreed purchase price was stated at Ksh. 500,000 and the defendant signed the agreement acknowledging receipt of Ksh 492,500. The plaintiff contends, and it is not contested, that she is in possession of the suit property.
8. On her part, the defendant disputes the existence of a formal agreement and asserts that she only received Ksh 238,000 which she is treating as rent.
9. I have looked at the signature on the agreement for sale and the signature on the replying affidavit. I have also taken into account the fact that both parties concede that there was an agreement for sale. Whether or not the agreement was rescinded is a question to be answered at the substantive hearing. For now, I am satisfied that the plaintiff has demonstrated that she has an interest in the suit property arising from the agreement for sale and that she is in actual possession of the suit property. I am therefore satisfied that the plaintiff has satisfied the first limb of the *Giella v Cassman Brown* Principle.

10. The plaintiff contends that she is faced with eminent eviction by her sister who sold to her the suit property way back in 1996 and is now renegeing on the sale. In my view, an eviction would occasion injury that may not be adequately indemnified through an award of damages.

11. The upshot of the above findings is that the plaintiff's Notice of Motion dated 15/4/2015 has merit and is granted in terms of prayer 3. The plaintiff shall have costs of the application.

12. Lastly, I note that the chief magistrate court has jurisdiction to hear and determine this suit. Consequently, the suit is hereby transferred to the chief magistrate court at Milimani.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF MAY 2018.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr R W Mungao Advocate for the Plaintiff

Mr P. Mwiti Advocate for the Defendant

Ms Kajuju Court clerk