

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL SUIT NO. 1499 OF 2016

NTIKYA ENTERPRISES LIMITED.....PLAINTIFF

VERSUS

PETER NGECHU IRUNGU.....DEFENDANT

RULING

1. Through a plaint dated 20/11/2016, the plaintiff contends that the defendant has trespassed onto its piece of land designated as Plot No 1243 and being part of Land Reference Number 8480/1561. Consequently, the plaintiff seeks an eviction order against the defendant. The plaintiff also seeks a permanent injunction against the defendant.

2. Together with the plaint, the plaintiff brought a Notice of Motion dated 30/11/2016 seeking an interim order restraining the defendant against trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the suit property pending the hearing and determination of this suit. The application is supported by an affidavit sworn by James Waitthaka Chege. That application is the subject of this ruling.

3. The respondent opposes the application through a replying affidavit dated 7/11/2017. His case is that he entered into a valid sale agreement with the plaintiff on 20/8/2017 through which he purchased the suit property from the plaintiff at Kshs 1,000,000. He further contends that he paid full purchase price to the plaintiff. He has annexed copies of the agreement, receipts, and banking slips. He contests the allegation that he is a trespasser on the suit property.

4. The court has considered the application together with the parties' respective affidavits and submissions. The single issue to be determined is whether the applicant has satisfied the criteria for grant of an interlocutory injunction as spelt out in **Giella v Cassman Brown (1973) EA**. In brief, the applicant is required to demonstrate a prima facie case with a probability of success. Second, the applicant is required to demonstrate that if the injunctive order is not granted it stands to suffer injury that cannot be indemnified through an award of damages. If the court were to be in doubt, the application is to be determined on a balance of convenience.

5. At the time of bringing this suit, the plaintiff contended that the defendant was a trespasser on the suit property. The defendant filed a replying affidavit denying the allegation that he is a trespasser. He contended that he purchased the suit property from the defendant and he paid purchase price in full. He exhibited copies of the sale agreement which he contended was duly executed by directors of the plaintiff company. He also exhibited copies of Bank deposit slips reflecting monies deposited into the plaintiff's bank account at Equity Bank on diverse dates. Similarly he exhibited receipts issued by the plaintiff. The plaintiff did not file any supplementary affidavit to challenge the defendant's contention and evidence.

6. Taking into account the evidence put forth by the defendant in response to the plaintiff's application, the court is not convinced that, at this point, the defendant is a trespasser against whom an injunctive order should issue. The court comes to the finding that the plaintiff has not demonstrated a prima facie case with a probability of success to warrant grant of an interlocutory injunction against the defendant. In light of the foregoing, the plaintiff's Notice of Motion dated 30/11/2016 is dismissed. The defendant shall have costs of the application.

DATED SIGNED AND DELIVERED AT NAIROBI ON THIS 29TH DAY OF JUNE 2018.

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B M EBOSO

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendant

Ms Halima Abdi - Court clerk