



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 398 OF 2017

SULEIMAN ISSA SULEIMAN

FEIZA ISSA SULEIMAN

FATMA ISSA SULEIMAN

NOOR ISSA SULEIMAN

SULTANA ISSA SULEIMAN.....PLAINTIFFS/APPLICANTS

VERSUS

AHMED MOHAMMED ISSA.....DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 3rd November, 2017. It's brought under Section 3A of the Civil Procedure Act and Order 40 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.

2. It seeks orders;

1) Spent.

2) Spent.

3) Spent.

4) Spent.

5) **That pending the hearing and determination of this suit this Honorable Court do stay the proceedings of Kadhis Succession Cause No. 72 of 2017 Ahmed Mohamed Issa –versus- Faiza Issa Suleiman & Suleiman Issa Suleiman.**

6) **That pending the hearing and determination of this suit this Honourable Court do grant an order restraining the Defendant/Respondent personally or through his employees, servants and/or agents from evicting the Plaintiffs/Applicants from the house in Plot Number Mombasa/Block XVII/544.**

7) **That the Defendants do pay the costs of this application.**

3. The grounds are on the face of the application. They are listed as in paragraph 1-7. I do not need to reproduce them here.

4. The application is supported by the affidavit of Suleiman Issa Suleiman, the 1st Plaintiff/Applicant herein sworn on the 3rd November, 2017 and a further affidavit sworn on the 6th February, 2018.

5. The application is opposed. There is a replying affidavit sworn by Ahmed Mohammed Issa, the Defendant/Respondent sworn on the 30th November, 2017.

6. It is the Plaintiff/Applicants case that they are beneficial owners of the house existing on Plot Number Mombasa/Block XVII/544 registered in the names of the late Mohamed Issa Suleiman. The late Mohamed Issa Suleiman had entered into an agreement with his late father, Issa Suleiman that he shall hold the title as a trustee for his brothers and sisters.

The Defendant/Respondent has filed **Kadhi Succession Cause No. 72 of 2017** seeking to inherit the house as his father's heir. He further made an application seeking to evict the Plaintiffs/Applicants from the house.

7. It is the Defendant's/Respondent's case that his father purchased the property in 1966 and constructed a house. That when he passed on, the Defendant/Respondent petitioned for letters of administration.

The grant was issued and confirmed. The said grant has not been challenged. The Plaintiffs/Respondents were invited to stay in the said house. That the Plaintiffs/Applicants have not established a prima facie case with a probability of success at the trial.

8. I have considered the pleadings, the notice of motion, affidavits in support and the annexures. I have considered the relying affidavits and annexures. I have considered the oral submissions of counsels.

The issues for determination are;

i) Whether or not the Plaintiffs/Applicants' application meets the threshold for grant of temporary injunctions.

ii) What orders should the court make?

iii) Who should bear costs?

9. At this juncture, it is necessary for this court to briefly examine the legal principles governing the applications of this nature. In an application for an interlocutory injunction, the onus is on the Applicant to satisfy the court that it should grant an injunction.

An injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles. The conditions for grant of temporary injunctions were laid down in the celebrated case of *Giella –versus- Cassman Brown And Company Limited (1973) EA 358.*

10. In the case of *Mrao Limited –versus- First American Bank of Kenya Limited And 2 Others (2003) KR 125* the Court of Appeal in determining what amounts to a prima facie case stated;

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

I am guided by the above authorities.

11. I have considered the Plaintiffs' case. Their assertion is that the Defendants/Respondents father held the title in trust for his siblings. This assertion was not challenged by the Defendant/Respondent.

The Defendant/Respondent has also failed to convince the court that the agreement between the Defendant/Respondent's father and his grandfather is a forgery. I find that the Plaintiffs/Applicants have established a prima facie case with a balance of probability of success at the trial.

12. I also find that they have demonstrated that they are likely to suffer irreparable injury that cannot be compensated by an award of damages if these orders are not granted. Nothing will prevent the Defendant/Respondent who is the legal representative of the estate of the deceased from evicting them.

I am persuaded by the facts presented by the Plaintiffs/Applicants that they deserve the orders sought. In the case of *Kenleb Cons Limited –versus- New Gatitu Service Station & Another (1990) KLR 557.* it was held by Bosire J.(as he then was) that;

“to succeed in an application for injunction an applicant must not only make full and frank disclosure of all relevant facts to the just determination of the application but must show he has a right, legal or equitable, which requires protection by injunction.”

I find that the Plaintiffs herein deserve this kind of protection.

13. I also find that the balance of convenience tilts in favour of the Plaintiffs/Applicants who risk being evicted if these orders are not granted. They deserve a chance to be heard.

14. All in all, I find merit in this application and I grant the orders sought namely;

a) That pending the hearing and determination of this suit, an order do and is hereby issued that the proceedings of Kadhis Court Succession Cause No. 72 of 2017 Ahmed Mohammed Issa –versus- Feiza Issa Suleiman & Suleiman Issa Suleiman be stayed.

b) That an order be and is hereby issued restraining the Defendant/Respondent personally or through his employees, servants and/or agents from evicting the Plaintiffs/Applicants from the house on Plot Number Mombasa/Block XVII/544.

c) That costs of this application do abide the outcome of the main suit.

It is so ordered.

DATED and SIGNED at MOMBASA on the 28th day of *June* 2018.

L. KOMINGOI

JUDGE

DATED, SIGNED and DELIVERED at MOMBASA on the 28th day of *June* 2018.

A. OMOLLO

JUDGE