



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 231OF 2011

MARGARET WAMAITHA NJOROGE.....PLAINTIFF

(suing as the Legal Representative of the estate of STEPHEN NJOROGE GITHU (DECEASED))

VERSUS

CHARLES MWANDAWIRO.....1ST DEFENDANT

MILCAH WANJIRU.....2ND DEFENDANT

STEPHEN NJOROGE.....3RD DEFENDANT

CITY COUNCIL OF NAIROBI.....4TH DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 23rd May 2011 in which the Plaintiff/Applicant seeks for the following orders:

1. Spent.
2. Spent.
3. Spent.
4. That upon hearing this Application inter partes, this Honourable court be and is hereby pleased to compel the 1st and 2nd Defendants either by themselves, their agents and/or servants or people acting through them to vacate Shop No. 8 situate at Riruta Satellite (hereinafter referred to as the “suit premises”) pending the hearing and determination of this suit.
5. That upon hearing this Application inter partes, this Honourable court be and is hereby pleased to issue an order of temporary injunction restraining the Defendants/Respondents either by themselves, their agents and/or servants or people acting through them in whatever manner from interfering with the suit premises pending the hearing and determination of this suit.
6. That costs of this Application be provided for.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff/Applicant, Margaret Wamaitha Njoroge, sworn on 23rd May 2011 in which she averred that she is a widow and legal administrator of the estate of Njoroge Githu (the “Deceased”) who was her husband and a tenant of the 4th Defendant. She further averred that due to her health condition and advanced age, she granted her grandson who is the 3rd Defendant rights limited to ensuring that the rents due to and owing to the 4th Defendant are fully paid up. She stated further that contrary to her instructions, the 3rd Defendant proceeded to lease out the suit premises to the 1st Defendant for a period of 10 years commencing on 1st October 2009. She averred that she has never authorized the 3rd Defendant to lease out the suit premises to any other person therefore the agreement with the 1st Defendant was done fraudulently and should be nullified by this

court. She added that the 1st Defendant proceeded to allow the 2nd Defendant to carry on the business of a butchery at the suit premises since October 2010. She then stated that she instructed her advocates to demand vacant possession of the suit premises but the 2nd Defendant has adamantly refused to move out alleging that she has since obtained documentation from the 4th Defendant showing that she is now the lawful tenant of the suit premises.

The Application is contested. The 2nd Defendant, Milcah Wanjiru, filed her Replying Affidavit sworn on 30th June 2011 in which she averred that she and the 1st Defendant, who is her fiancé, being desirous of starting a business of their own set about looking for a suitable business premises within Riruta Satellite. She averred that sometime in October 2009, they met the 3rd Defendant who introduced himself as the proprietor of the suit premises. She averred further that the 3rd Defendant offered to lease to her the suit premises in consideration of payment of goodwill of Kshs. 200,000/-, rent of Kshs. 50,000/- per month for the months of October, November and December 2009 and subsequently pay rent of Kshs. 30,000/- per month thereafter. She added that upon agreeing to those terms the 3rd Defendant gave her and her fiancé a lease over the suit premises for a period of 10 years from 1st October 2009. She added that her fiancé the 1st Defendant is the one who signed the Lease Agreement on her behalf as he is the one who was financing the business. She mentioned that the 3rd Defendant's mother, one Grace Wairimu, was present during the signing of the Lease Agreement and confirmed that the 3rd Defendant was indeed the proprietor of the suit premises. She added that at that time, she did not know that the suit premises was actually registered in the name of the 4th Defendant. She confirmed that the 1st Defendant paid the 3rd Defendant Kshs. 200,000/- being goodwill and two months rent totaling to Kshs. 100,000/- before he could be allowed to sign the Lease Agreement. She further averred that upon taking possession of the suit premises, she proceeded to renovate it at a cost of Kshs. 500,000/- and proceeded to start her business there while paying the 3rd Defendant rent as agreed in the Lease Agreement. She further averred that the Plaintiff substantially breached the terms of her tenancy with the 4th Defendant by sub-letting the suit premises to other tenants and is therefore not entitled to any of the prayers sought in this Application. She then averred that upon learning that the suit premises belonged to the 4th Defendant sometimes in September 2010, she formally applied to the Director of Social Services & Housing of the 4th Defendant requesting to be allocated the suit premises since she was the one in occupation. She further stated that the 4th Defendant approved her request and proceeded to allocate the suit premises to her and issued to her with a Housing Estates Rent Card No. 33647 with effect from 1st October 2010. She stated that she has since then continuously paid her rent to the 4th Defendant with no default whatsoever. She requested the court to dismiss this Application because the Plaintiff lacks *locus standi* since she is not the owner of the suit premises, her interest having been terminated by the 4th Defendant.

The Application is further contested by the 4th Defendant which filed the Replying Affidavit of J.N. Kariuki, its Director of Social Services & Housing, sworn on 9th May 2012. In that Replying Affidavit, he averred that the records of the 4th Defendant, which is the owner of the suit premises, shows that since the demise of the original tenant that is the Deceased in 1999, the suit premises has never been occupied by the Plaintiff but was instead sub-let to different people without the consent of the 4th Defendant. He further averred that from the year 2005, the rent for the suit premises was frequently unpaid which led to the 4th Defendant taking steps to evict the occupants on several occasions. He added that on 6th July 2010, the 4th Defendant served the occupants of the suit premises with a demand notice for payment of arrears amounting to Kshs. 384,090/-. He further added that no response was received to that demand notice which prompted the 4th Defendant to allocate the suit premises to a new tenant who was able to pay the monthly rent and occupy the suit premises. The new tenant was the 2nd Defendant. He further stated that in view of the foregoing, it is clear that this Application is incompetent, bad in law, unfounded and amounts to an abuse of court process and should be dismissed with costs.

The issues coming up for determination is whether to issue an eviction order, evicting the 1st and 2nd Defendants who are in occupation of the suit premises and secondly whether or not to issue an order of temporary injunction restraining the Defendants/Respondents either by themselves, their agents and/or servants or people acting through them in whatever manner from interfering with the suit premises pending the hearing and determination of this suit. However, the court has considered the suit premises that this case relates to. The same is described as Shop No. 8 Riruta Satellite. Such a description is vague and unclear and gives no land reference number. The suit premises is therefore unknown to this court. The court cannot issue orders in respect of a parcel of land that is not properly identified and described. That being the position, this court finds that it is unable to go to the merits of this Application and the same is hereby dismissed with costs to the Defendants.

It is so ordered.

SIGNED AND DATED AT NAIROBI BY LADY JUSTICE MARY M. GITUMBI THIS 19TH DAY OF JUNE 2018

MARY M. GITUMBI

JUDGE

DELIVERED AT NAIROBI BY JUSTICE BERNARD EBOSO THIS 21ST DAY OF JUNE 2018

BERNARD EBOSO

JUDGE