

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 1285 OF 2014

SAMUEL OLUOCH HELU.....PLAINTIFF

- VERSUS-

NATIONAL SOCIAL SECURITY FUND.....DEFENDANT

RULING

1. On 17/10/2014 the plaintiff brought a Notice of Motion seeking the following orders:-

a. That this application be certified urgent and service thereof be dispensed with in the first instance and the same be heard exparte.

b. That this Honourable Court be pleased to issue an order compelling the defendants to reveal and disclose the true identity of the person occupying the suit property being Title Number 97/Tassia Estate (plot No. 597, 598 & 600). Embakasi, Nairobi, pending the hearing and determination of this application interpartes

c. The Court be pleased to issue summon to the Managing trustee of the defendants or, its agents, servant, surrogates and assignees to appear in court and shed light as to the identity of the person in possession of the suit property being Title Number LR Number 97/Tassia Estate (Plot No 597,598 & 600) Embakasi, Nairobi pending the hearing and determination of this suit interpartes.

d. That costs of this application be provided for

2. The plaintiff contended that efforts by him to identify the persons currently in possession of Land Reference Number 97/Tassia Estate (Plot No 597, 598 and 600 Embakasi, Nairobi, have been futile. He added that the application was necessitated by the need to join as defendants the persons who are currently in occupation of the suit property. The application was not opposed.

3. I have considered the tenor and import of the Notice of Motion. It seeks to compel the defendant to disclose the identity of the persons occupying the suit property. It does not seek to compel the defendant to identify the identity of the person or persons with whom the defendant may have entered into a purchase agreement. The plaintiff brought this suit seeking an injunction and eviction orders in relation to the suit property. In my view, it is the plaintiff who ought to know the person who is in occupation of the suit property. To shift that burden to the defendant would be unreasonable.

4. Consequently, the court is not satisfied the plaintiff has made out a case to warrant the orders sought. The upshot is that the notice of motion dated 17/10/14 is dismissed for lack of merit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF JULY 2018.

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B M EBOSO

JUDGE

In the presence of:-

Mr Odoyo Advocate for the Defendant

Ms Halima Abdi - Court clerk