

REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI

ELC SUIT NO. 455 OF 2017

ERICK MUSUNDI.....PLAINTIFF/APPLICANT

VERSUS

KEITH NGAROCHI.....DEFENDANT/RESPONDENT

RULING

1. Through a Notice of Motion dated 5th July 2017, the plaintiff seeks an injunctive order restraining the defendant together with his servants/agents against interfering with the plaintiff's quiet enjoyment, use, possession and occupation of Plot Number MII4.1 Umoja Estate, Nairobi (the **suit property**). The plaintiff's case is that he was allocated the suit property by the defunct City Council of Nairobi. He contends that he erected on the suit property structures at a cost of Kshs.870,000/=. In June 2017, the defendant threatened to demolish the structures. He further contends that there is a high likelihood that the defendant would dispose the suit property. Consequently, he seeks a permanent restraining order, general damages and costs of the suit. He seeks an interim restraining order pending the hearing and determination of the suit.

2. The defendant opposes the application through a replying affidavit sworn on 20th September, 2017. The defendant's case is that he owns the suit premises, having been allocated the suit property by the defunct City Council of Nairobi in 1994. He further contends that the structures on the suit property were developed by him and the plaintiff has been a tenant in the suit premises at a monthly rent of Kshs.20,000/=. The defendant adds that the plaintiff stopped paying rent in April, 2017, prompting the defendant to levy distress for rent. A subsequent reference by the plaintiff to the Business Premises Rent Tribunal was dismissed by the Tribunal. The plaintiff thereafter lodged a suit in the Chief Magistrate Court at Milimani seeking restraining orders and the same was similarly dismissed. The defendant contends that as at December 2017, the plaintiff was in rent arrears of Kshs.120,000/=. He urged the court to dismiss the application.

3. The application was canvassed through written submissions dated 26th January, 2018. The defendant's written submissions in response to the application are dated 6th October, 2017 and were filed on 8th November, 2017.

4. I have considered the application, the rival affidavits and the rival written submissions. I have also considered the law and relevant principles governing interlocutory injunctions as spelt out in **Giella v Cassman Brown (1973) EA 358**. The applicant was required to demonstrate a *prima facie* case with a probability of success. Secondly, he was required to demonstrate that unless the injunctive order is granted, he would stand to suffer irreparable damage that cannot be adequately indemnified through an award of damages. Lastly, were the court to be in doubt, the application would be determined on a balance of convenience. At this point, the court would not make definitive factual findings on the matter.

5. I have carefully examined the affidavit in support of the application and the annexures thereto. The plaintiff contends that he was allotted the suit property in November, 2013. He has however, not exhibited any documentary evidence of the alleged allotment to support his claim of title over the suit property. On his part, the defendant exhibited an application for allotment of plots dated 19th October, 1994. He also exhibited a beacon certificate. Further, he exhibited suit papers in respect of Milimani CMCC 472/2017 in which the plaintiff herein swore an affidavit stating that he was a tenant of the defendant in the suit premises.

6. From the materials presented to the court at this point, the plaintiff has not demonstrated that he has a legal or beneficial interest in the suit property. At this point, the materials presented to the court disclose probable existence of a tenancy relationship between the plaintiff (as tenant) and the defendant (as landlord). Consequently, the court's finding at this point is that the plaintiff has failed to demonstrate a *prima facie* case with probability of success.

7. The upshot of the foregoing is that the plaintiff's Notice of Motion dated 5th July, 2017 lacks merit and the same is dismissed with costs to the defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY of SEPTEMBER 2018

B M EBOSO

JUDGE

In the presence of:-

Mr Nganga holding brief for Mr Manyara for the Defendant

Ms June Nafula - Court Assistant