

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

MILIMANI LAW COURTS

ELC. NO. 757 OF 2015

SAMUEL NYAKAMBA.....PLAINTIFF

VERSUS

JACINTA MWEU..... DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 3rd August 2015 in which the Applicant sought for an order of mandatory injunction against the Respondent to deliver vacant possession of the kiosk in Kibera Highrise Estate C3-27 (hereinafter referred to as the “suit property”) and that the Officer Commanding Langata Police Station do supervise compliance with the order.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Applicant, Samuel Nyakamba, sworn on 3rd August 2015 in which he averred that he entered into a Tenant Purchase Agreement with National Housing Corporation to purchase the suit property. He added that he built a Kiosk on the grounds of the suit property in the year 2010. He added that the Respondent has been his tenant in that Kiosk since then through a Tenancy Agreement. He further averred that the Respondent has on various dates defaulted on paying rent to him since December 2013. He further added that the Tenancy Agreement entered into with the Respondent expired on 1st July 2015 by operation of law. For that reason, he asserted that there is no existing tenancy relationship with the Respondent and that she is a trespasser. He sought that the court does allow this Application to enable him to obtain possession of the suit property from the Respondent.

The Application is not opposed.

The issue arising from this Application is whether or not to grant the mandatory injunction sought after by the Applicant. The leading authority on this issue is the case of **Locabail International versus Agro Export (1986) 1 ALLER 901** wherein it was stated at follows:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and only in clear cases where the court thought that the matter ought to be decided at once, or where the injunction was directed at simple and summary act which could easily be remedied or where the Defendant had attempted to steal a march on the Plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a high sense of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

Further, in **Homes Limited versus Shandahu (1971) 1Ch. 34**, the following was stated:

“It is plain that in most circumstances a mandatory injunction is likely, other things being equal, to be more drastic in its effect than a prohibitory injunction. At the trial of the action, the court will, of course grant such injunctions as the justice of the case requires; but at the interlocutory stage, when the final result of the case cannot be known and the court has to do the best it can, I

think the case has to be unusually strong and clear before a mandatory injunction will be granted, even if it is sought in order to enforce a contractual obligation.”

While I concede that the Applicant does have a strong case against the Respondent, my overall finding is that I cannot sanction the eviction of the Respondent from the suit property at this interlocutory stage. I hold the view that this suit should go to full trial and have the court make a final determination on whether or not to evict the Respondent out of the suit property. I therefore decline to issue the mandatory injunction sought after by the Applicant.

On those grounds, this Application is hereby dismissed with costs in the cause.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JANUARY 2017.

MARY M. GITUMBI

JUDGE