



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC NO. 274 OF 2016

JAMES MWANGI KARIMA.....PLAINTIFF

-VERSUS-

JOHN MUTUGI GACHAU.....DEFENDANT

RULING

1. The plaintiff, James Mwangi Karima, (“applicant”) filed a Notice of Motion dated **14th December, 2016** seeking an order for temporary injunction to restrain the defendant, John Mutugi Gachau (“respondent”), his agents or servants from selling/subdividing, charging, alienating, transferring and evicting the plaintiff from the **LR No. Nyandarua/Kaimbaga/ 211** (“suit property”) pending the hearing and determination of the suit.
2. The application is premised on the grounds on its face and is supported by the applicant’s affidavit sworn on **14th December, 2016**. In that affidavit, he deposes that he purchased the suit property from the respondent vide a sale agreement dated 21st January, 1988 (**JMK1**) for Kshs 80,000/= which price was later adjusted to Kshs 100,000/= vide a supplementary agreement (**JMK2**). He took possession of the suit property with the consent of respondent and his wife as evidenced in (**JMK3**) and (**JMK4**).
3. It is his contention that the suit property was charged to Settlement Fund Trustee (SFT) (**JMK5**), and the respondent was to repay the outstanding loan and transfer the land to him but the respondent never kept his word. One day, the applicant visited the SFT offices in Nairobi and found that the respondent had settled the outstanding loan and was awaiting the discharge and issuance of a title deed but he never disclosed this to him. The applicant urges the court to grant him the orders because he has lived on the suit property for 27 years and will be rendered homeless if the orders are not granted.
4. The application is opposed vide a replying affidavit sworn on **28th December, 2016**. In that affidavit, the respondent admits entering into a sale agreement with the applicant and selling to him 1 acre out of the suit property. He further acknowledges that the suit property had initially been registered in the name of SFT and that he has since discharged the suit property and has been issued with a title deed (**JMG1**).
5. He admits that the applicant took possession and started cultivating the suit property in 2007 by which time he (respondent) had fenced the suit property planted eucalyptus trees and built a house. He had no problem with the applicant until 2008 when he visited the suit property and found that the applicant had turned it into a quarry contrary to what they had agreed.
6. The matter was disposed of by way of written submissions which I have considered together with the

pleadings filed.

7. The principles for granting injunctive orders are set out in the case of **Giella v Cassman Brown and Co. Ltd & Another** [1973] E.A. 358:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an inter-locutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

8. Applying the above principles to the circumstances of this case, I am satisfied that the applicant has established a *prima facie* case. I say this because it is common ground that he has been in possession of the suit property for 27 years with the consent of the respondent as evidenced by the sale agreement dated 21st January 1988, affidavits sworn by the respondent and his wife and a letter authorising him to take possession. The respondent has also admitted in his supporting affidavit that he allowed the applicant to cultivate the suit property. There is no doubt in my mind that if the orders sought are not granted, the applicant may be evicted from the suit property which is now registered in the name of the respondent.

9. To preserve the suit property I allow prayer 3 in the notice of motion dated 14th December, 2016 under **Order 40 1(b)** of the Civil Procedure Rules.

10. Costs of the application shall be in the cause.

Dated, signed and delivered in open court at Nyeri this 13th day of March, 2017.

L. N. WAITHAKA

JUDGE

In the presence of:

Ms Kainga h/b for Ms Muchuki for the respondent

N/A for the applicant/plaintiff

Court clerk - Esther