



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**

**AT MILIMANI**

**ELC CASE NO. 984 OF 2015**

**DANIEL KAMAU NDUATI.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**ALICE MUMBI KARIUKI.....DEFENDANT/RESPONDENT**

**RULING**

1. The applicant **David Kamau Nduati** filed a notice of motion dated 8<sup>th</sup> October 2015 in which he sought the following reliefs against the respondent **Alice Mumbi Kariuki**:-

**1. Spent**

**2. Spent**

**3. The Honourable court be pleased to grant an interim injunction restraining the Defendant/Respondent by herself, her servants, agents and/or employees from entering or building any structure or continuing with any building or construction on the property known as Plot No. 164 – Komarock Bridge Jua Kali Residential cum commercial plots Dandora Phase 1 pending the hearing and determination of this suit.**

**4. The compliance of any order herein be supervised or enforced by the OCS Buru Buru Police Station.**

**5. That the costs of this application be borne by the Defendant/Respondent.**

2. The applicant contends that he is the Proprietor of **Plot No. 164 – Komarock Bridge Jua Kali Residential Cum Commercial plots Dandora Phase I** (suit land) which was allocated to him by the then Nairobi City Council. That the respondent has without any colour of right invaded the suit land and has started putting up a permanent structure. He reported the invasion to the police and area Chief but that the respondent has persisted in the interference with the suit land. He therefore contends that unless the respondent is restrained by way of injunction, he will suffer irreparable loss.

3. The respondent has opposed the applicant's application through a replying affidavit sworn on 18<sup>th</sup> November 2015. The respondent contends that she bought the suit land from its original allottee one **Adrine Wanjiru Gachui alias Maina** in the year 2001. That she was subsequently given a plot allocation card by Komarock Bridge Jua Kali Association. Following vetting of plot owners, the vetting committee recommended that she be registered as owner of the suit land.

4. The respondent further contends that the applicant's name does not appear on the list of plot owners in the area and that the applicant has severally tried to dispossess her of the suit land. The buildings on the suit land were put up with effect from 2003. The respondent takes issue with the documents produced by the applicant which show that the suit land was allocated to one Rachel Wambui Kamau.

5. In a further reply to the respondent's contention, the applicant argues that the suit land was transferred to him by Rachel Wambui Kamau and that he is the one who has been paying plot rent to the Nairobi City Council. That the respondent has not produced any document to show that she has been paying any monies to Nairobi City Council.

6. I have carefully looked at the documents presented by both the applicant and the respondent. This being an application for injunction, the applicant is expected to meet the threshold set out in the celebrated case of **Giella –Vs- Cassman Brown & Co Ltd [1973] EA 358**. In an application of this nature, an applicant is expected to show that he has a prima facie case with probability of success.

7. A prima facie case was described in the case of **Mrao Limited –Vs- Frist American bank of Kenya Limited & others [2NG] KLR 125** as follows:-

***“..... a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”***

8. In the instant case, when the applicant made this application, he averred that he was the one entitled to the plot on account of allocation. His claim was based on a letter of allocation which he annexed to the Supporting affidavit. The letter of allocation shows that the suit land was allotted to Rachel Kamau Wambui on 21<sup>st</sup> September 2001. He did not explain the basis of his claim to the suit land when the letter of allocation shows that the suit land was allotted to someone else. It is after the respondent replied when the applicant tried to explain that the suit land was transferred to him by Rachel Kamau Wambui.

9. A look at the applicant's further affidavit sworn on 2<sup>nd</sup> March 2016 shows that the said transfer request was made by Rachel Wambui Kamau on 25<sup>th</sup> September 2012. It is not clear when the transfer was effected from the name of Rachel Wambui Kamau to the name of the applicant. A bill was generated in the applicant's name on 13<sup>th</sup> March 2015. In the same year on 27<sup>th</sup> March 2015 a bill was generated in the name of Rachel Kamau Wambui. This would not have been possible if the suit land had been transferred from Rachel Wambui Kamau into the applicant's name. Prima facie, there appears to be something wrong with the documents presented by the applicant.

10. It is clear that it is the respondent who has been in possession. The respondent has produced documents to show that she bought the suit land. There was vetting of plot owners and the vetting committee recommend that she be registered as owner of the suit land. The respondent produced a list of plot owners in the case. The name of Rachel Wambui Kamau or the applicant does not appear in the list.

11. The applicant has not demonstrated that he has a *prima facie* case with probability of success. If at the end of the day it is found that the applicant is the owner of the suit land, he will be compensated. Even if there was to be any doubt in my mind as to the ownership of the suit land, the balance of convenience would have tilted in favour of the respondent who is in possession. I therefore find that no injunction can be given in the circumstances I proceed to dismiss the applicant's application with costs to the respondent.

It is so ordered.

Dated, signed and delivered at **Nairobi** on this **30<sup>th</sup>** day of May 2017.

**E.O .OBAGA**

**JUDGE**

In the absence of the parties who were aware of the date and time for delivery of ruling. Court assistant - Hilda

**E.O .OBAGA**

**JUDGE**