



REPUBLIC OF KENYA
IN THE E.L.C. COURT OF KENYA AT EMBU

E.L.C. NO. 77 OF 2016

JAMES MUTHONI GIBSON.....PLAINTIFF

VERSUS

STEPHEN KARIUKI CHARLES.....DEFENDANT

RULING

1. By a Notice of Motion dated 7th December 2016 under certificate of urgency, the Plaintiff sought orders of injunction (both temporary and permanent) to restrain the Defendant from interfering with the smooth running of her school, destruction of structures and “disruption of other economic businesses” on Title No. KAGAARI/KIGAA/7246 which is the subject of the suit herein.
2. The said application was inelegantly drawn and worded since it was drawn by the Plaintiff before she engaged her current advocates. For instance, the application seeks a *permanent* injunction against the Defendant at the interlocutory stage instead of a temporary injunction. However, the court considers that such error does not affect the substance of the case. The Plaintiff must have intended to refer to a *temporary* injunction pending the hearing and determination of the suit.
3. The said application was supported by the affidavit sworn by the Plaintiff on 7th December, 2016 in which she stated that she bought the suit property from the Defendant sometime in May 2012. She further deposed that the Defendant had interfered with operations on the plot and wanted the court to issue an injunction to restrain the Defendant from further interference, destruction of structures and economic sabotage. However, no particulars of the alleged offending acts were given.
4. The Defendant filed his replying affidavit sworn on 23rd December 2016 in which he denied selling the property to the Plaintiff and challenged the Plaintiff to exhibit a copy of a sale agreement to that effect. He stated that he bought the suit property from the previous owner in January 2012 and put up some buildings which he rented out to the Plaintiff. The Defendant denied having interfered with any of the Plaintiff’s operations on the suit property and stated that no particulars of the acts complained of had been given or pleaded.
5. The Defendant further stated in his affidavit that the Plaintiff had defaulted in payment of rent in consequence of which a demand letter dated 10th November 2016 was sent to her. He, therefore, concluded that the instant suit was a ploy by the Plaintiff to avoid payment of the rent due.
6. I have perused the plaint dated 7th December 2016 and noted that the Plaintiff claims to have bought the suit property from the Defendant in May 2012 at a consideration of Kshs 300,000/-. It is also pleaded that consent to transfer was granted by the relevant Land Control Board on 6th July 2012 and that the Plaintiff has constructed thereon a school known as *Runyenjes Precious Academy*.

7. It is also evident from the plaint that the suit property was never transferred to the Plaintiff in consequence of which she sought the following orders against the Defendant.

a) *Transfer of land parcel No. KAGAARI/KIGAA/7246*

b) *Necessary transfer documents to be signed by the Deputy Registrar of the court and production of the title deed be dispensed with.*

c) *Costs of the suit.*

8. It is quite evident from the Notice of Motion dated 7th December 2016 which was filed contemporaneously with the suit that the Plaintiff is not seeking any orders for preservation of the suit property pending the hearing and determination of the suit. She is only seeking an order to restrain the Defendant from interfering with the smooth running of the school, demolition or destruction of structures and sabotage of economic activities on the suit property. It is also noteworthy that there are no allegations in the plaint of the alleged interference, destruction of structures or disruption of economic activities in the plaint.

9. Be that as it may, the court shall deal only with the prayer presented to the court in the Notice of Motion dated 7th December 2016. The court has considered the general allegations of interference in the smooth running of the Plaintiff's school, destruction of property and economic sabotage. There are absolutely no particulars of the acts complained of and the court has no idea what the Defendant is alleged to have done, what property may have been destroyed or threatened with imminent destruction or what acts of economic sabotage may have been committed by the Defendant.

10. The Defendant has in his replying affidavit wondered what the acts complained of could be but nonetheless denied interfering with the smooth operations of the Plaintiff's business, destruction of property or economic sabotage. No further or supplementary affidavit was ever filed to supply the particulars.

11. In the circumstances of this case, the court is far from satisfied that the Plaintiff has established a *prima facie* case with a probability of success at the trial. As stated in the Court of Appeal case of **Mrao Ltd Vs First American Bank of Kenya Ltd & 2 Others [2003] eKLR** a *prima facie* case is:

“...a case 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.”

12. In the absence of proper particulars of what the Defendant is alleged to have done or threatened to do in violation of the Plaintiff's legal rights whether as a tenant or property owner, it is difficult for the court to find that a *prima facie* case with a probability of success has been demonstrated. I, therefore, hold that the Plaintiff has failed to satisfy the first principle for the grant of an order of injunction as set out in the case of **Giella Vs Cassman Brown & Co Ltd [1973] EA 358**.

13. It shall not, therefore, be necessary for the court to consider the 2nd and 3rd principles for the grant of an injunction since the Plaintiff's case has failed at the first hurdle.

14. The upshot of the foregoing is that the Plaintiff's Notice of Motion dated 7th December 2016 fails and the same is dismissed with costs.

Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **28th day of JUNE 2017**.

In the presence of Mr Kamunde for Plaintiff and Mr Kamunyori for Defendant.

Court clerk Njue/Leadys.

Y.M. ANGIMA

JUDGE

28.06.17