

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 704 OF 2017

JULIUS KAMAU KARANJA.....PLAINTIFF

VERSUS

ELVIS MELITA SUYIANKA.....1ST DEFENDANT

CATHERINE MUTWA.....2ND DEFENDANT

RULING

The application before this court is a notice of motion by the Plaintiff dated the 9th May, 2017 and filed on 11th May, 2017 brought pursuant to Order 40 Rules 1, 2, & 10 of the Civil Procedure Rules. The application is premised on the grounds that the Plaintiff is the genuine allotted owner of land parcel number 3009/RESIDENTIAL - NOONKOPIR TRADING CENTRE (suit land) and the Defendants are merely interfering and trespassing by constructing on the said land. The application is supported by the affidavit of JULIUS KAMAU KARANJA who is the Plaintiff herein where he deposes that on 9th January, 2012 he bought the suit land from ELVIS MELITA SUYIANKA who is the 1st Defendant herein, for Kshs 400,000 which he paid in full. They executed a Sale Agreement with six witnesses and the plot was transferred to his name by the OL KEJUADO COUNTY COUNCIL. Further that he proceeded to pay rates and rents owing to date there is no land rent or rate due. He avers that the 1st Defendant directed the 2nd Defendant to the suit land and she has trespassed thereon and commenced constructing buildings on it.

The application proceeded unopposed on 29th May, 2017 as the defendants were properly served, as indicated in the affidavit of service, but failed to enter appearance nor file a replying affidavit. Ms. Kwena stated that she was seeking prayer number (2) of the instant motion. She submitted that the Plaintiff is the legal owner of the suit parcel and directed the Court to the Letter of Transfer from the OL KEJUADO County Council marked annexure 'JKK6'; Sale Agreement marked as annexure 'JKK 1'; Property Search Certificate marked annexure 'JKK 2'; Rate Clearance Certificates from Ol Kejuado County Council and County Government of Kajiado marked as annexures 'JKK 4' and 'JKK 5'; and receipts for rate payments marked 'JKK 7' and 'JKK 8' respectively. She emphasized that as per the Search Certificate, it was evident the Plaintiff is the lawful owner of the suit parcel and the 2nd Defendant had trespassed thereon.

Issue and Determination

Upon perusal of the application including the supporting affidavit and the annexures thereon, at this juncture the only issue for determination is whether the interim injunction sought by the Plaintiff ought to be granted pending the hearing and finalization of the main suit.

In line with the principles for consideration in determining whether temporary injunction can be granted or not as settled in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358** I wish to interrogate whether the Plaintiff/Applicant has made out a prima facie case with a probability of success at the trial.

In the instant case, the application proceeded unopposed as the Defendants' failed to file a replying affidavit to rebut the evidence adduced by the Plaintiff. The Court finds that the Plaintiff has demonstrated he is the legal allottee of the suit parcel of land which he bought from the 1st Defendant for Kshs. 400,000 as stated in the Sale Agreement. The suit land was then transferred to his name by the OL KEJUADO County Council and he has paid all the rents and rate to the OL KEJUADO County Council and County Council of KAJIADO respectively as indicted in the Rate Clearance Certificates. The Court notes that all the documents pertaining to the suit land are in the names of the Plaintiff and since there is no evidence to the contrary, the Court finds that Plaintiff has established a prima facie to warrant an injunction as he raises triable issues which are best determined at the trial. I hence allow the prayer (2) of the Plaintiff's application dated the 9th May, 2017 and filed on 11th May, 2017.

The costs will be in the cause.

Dated signed and delivered in open court at Kajiado this 11th day of July, 2017.

CHRISTINE OCHIENG

JUDGE