



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO
ENVIRONMENT AND LAND DIVISION

ELC NO. 553 OF 2017

GEOFFREY NJOGU KAPAAIPLAINTIFF

VERSUS

GRACE WANJIKU NDEGWA.....DEFENDANT

RULING

The application before this court is the Plaintiff's Notice of Motion dated 23rd March, 2017 brought pursuant to Section 3A of the Civil Procedure Act, Order 40 Rule 1A & B and Order 51 Rule 1 of the Civil Procedure Rules and all the other enabling provisions of the Law. The application is based on the following grounds which in summary are that the Plaintiff is the lawful registered owner of the suit property LR NO. 260 RESIDENTIAL IN ONGATA RONGAI, and the Defendant who was a tenant therein has refused to pay rent and claims ownership of the suit property. Further that there is imminent danger that the Plaintiff is likely to be dispossessed by the Defendant who has demolished structures thereon and taken over the property as hers.

The Application is supported by the affidavit of GEOFFREY NJOGU KAPAAI the Plaintiff herein where he deposes that he has been paying land rates and rent to Ol Kejuado County Council and Kajiado County Government respectfully. He states that the Defendant who was his tenant is in the process of developing the property to a different use against his wishes, has since misused, damaged, wasted, destroyed it and refuses to vacate.

The Defendant GRACE WANJIRU NDEGWA opposed the application and filed a replying affidavit where she deposed that she is the owner of land parcel number KWARE ONGATA RONGAI T. CENTRE/200/RES and has never been a tenant of the Plaintiff. She avers that she has been paying rents over her property, raised her children thereon and been in physical possession of the suit property for over twenty (25) years. She states that she has been in the process of acquiring title to the suit land and that the receipts annexed by the Plaintiff are a forgery.

The Defendant filed his written submission but the Plaintiff did not. On 31st May, 2017, the Plaintiff's Counsel reiterated the facts of their case and submitted that he relied on the receipts marked as 'GNK 2' from the County Council of Ol Kejuado and County Government of Kajiado dated way back from 1984 to prove the Plaintiff's ownership claim over the suit parcel. He stated that there is an ongoing case No. 4 of 2017 at the Nairobi Rent Restriction Tribunal between a third party George Makokha and the Plaintiff herein. The Counsel submitted that annexure 'GNK 3' are receipts of rent payment proving the Defendant was indeed a tenant of the Plaintiff. He submitted that the Plaintiff did not have any contention relating to the Defendant's land KWARE ONGATA RONGAI T 200/RES and that in the replying affidavit, the Defendant has confirmed that the Plaintiff is indeed the owner of the suit parcel. Further that

the Defendant has not furnished the court with any documents to prove ownership over the suit land. He relied on the case of ***Giella Versus Cassman Brown*** and stated the Plaintiff had proved his case as laid down by the principles stated therein.

The Counsel for the Defendant opposed the application and submitted that the Defendant has clearly demonstrated she is the owner of land parcel number KWARE ONGATA RONGAI T 200/RES where she has been in physical possession to date. He submitted that the Defendant does not occupy the suit land, is not a tenant therein and the receipts produced in court do not bear the Defendant's name but are a forgery. He also relied on the Case of ***Giella Versus Cassman Brown*** and stated that the Plaintiff had not established a prima facie case with a probability of success.

Issues and determination

I have considered the materials presented and arguments canvassed by the respective parties in regard to the Notice of Motion dated 23rd March, 2017 and analyzed that the only issue for determination is whether the Plaintiff is entitled to the interlocutory injunction sought.

The principles of granting interlocutory injunction was well settled in the case of ***Giella vs. Cassman Brown & Co. Ltd (1973) E.A 358*** where the court held inter alia that for an injunctive order to be granted the Applicant has to demonstrate it has prima facie case with a probability of success, and it stands to suffer irreparable loss or injury which cannot adequately be compensated in damages. If the court is in doubt, it should decide the application on a balance of convenience.

Bearing this principle in mind, I wish to interrogate whether the applicant has demonstrated a prima facie case with a probability of success at the trial. The Court notes as per exhibit 'GNK 1' annexed to the supporting affidavit, the County Government of Kajiado vide their letter dated 10th January, 2017 confirmed that the Plaintiff is the owner of the suit land which fact is not disputed by the Defendant. The Plaintiff has further presented receipts vide annexure 'GNK 2' to prove he has been paying land rent and rates to the Ol Kejuado County Council and Kajiado County Government. The Defendant on the other hand claims she is the proprietor of land KWARE ONGATA RONGAI T 200/RES, denies being a tenant to the Plaintiff and claims the receipts for rent 'GNK 3' presented by the Plaintiff are a forgery.

The Court hence finds that Plaintiff has demonstrated he has a prima facie case with a probability of success.

As to whether the Plaintiff stands to suffer irreparable loss or injury which cannot adequately be compensated in damages. The Court notes that the Plaintiff claims his enjoyment of the suit land has been curtailed by the Defendant. A fact denied by the Defendant that she is not a tenant. However, what is curious is why the Case at the Rent Restriction Tribunal instituted by a third party has enjoined the Defendant as the 2nd Defendant thereto. Further, why should the Defendant claim the rent receipts presented by the Plaintiff annexed as 'GNK 3' are a forgery. These are issues best determined at a full trial. The Court indeed finds that the Plaintiff stands to suffer irreparable loss if the orders sought are not granted.

On the question of balance of convenience, from the evidence presented by both the Plaintiff and the Defendant, I am not in doubt that if the title to the property is not preserved, it may be wasted away.

The upshot is that the notice of motion dated 23rd March, 2017 is merited and I allow it in the following terms:

'A temporary injunction be and is hereby issued restraining the Defendant/Respondent, her agents or servants or any other person from trespassing, constructing, transferring, alienating, wasting and or interfering with and or in any other manner dealing with all that parcel of land known as LR NO. 260 RESIDENTIAL IN ONGATA RONGAI pending the hearing and determination of this suit.

Costs will be in the cause.

Dated signed and delivered in open court at Kajiado this 27th day of September, 2017.

CHRISTINE OCHIENG

JUDGE

REPRESENTATION

Geoffrey Njogu Kapaai the plaintiff

No Appearance for defendant

Court Assistant Mpoye