



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 242 OF 2017

BENSON MAINA GATHITHI MUGI **1ST PLAINTIFF**
CATHERINE NJERI KAMBO **2ND PLAINTIFF**
ABDALLA JUMA **3RD PLAINTIFF**
KENNETH MARUBU **4TH PLAINTIFF**
ANTONY W. NG'ANG'A **5TH PLAINTIFF**
CHEGE PHARIS **6TH PLAINTIFFS**
BENSON MUGORO **7TH PLAINTIFF**
SILVIA NYAMBURA **8TH PLAINTIFF**
BIATO ITIMU **9TH PLAINTIFF**
JOHN IRUNGU **10TH PLAINTIFF**
CYRUS GATHIGA **11TH PLAINTIFF**
FRANCIS THIONG'O
As delegates of KENYA AFRICAN NATIONAL
UNION (KANU) KIHARU BRANCH **12TH PLAINTIFF**

VS

JOHN S. NJIRE MAINA **1ST DEFENDANT**
KENYA AFRICAN NATIONAL
UNION (KANU) HEAD OFFICE **2ND DEFENDANT**

RULING

1. The Application dated the 5/12/2016 seeks the following orders;
 - a. Spent
 - b. That pending the hearing and determination of this application interpartes, the Defendant/Respondent, by himself, his servant, agents or otherwise howsoever be restrained from trespassing alienating, leasing or in any other manner alienating or interfering with Plot No. 1193/0082, also referred as Plot No. 1193/82 Mukuyu Market or Plot No. Loc. II/Maragi/1193/82
 - c. Pending the hearing and determination of this suit, the Defendant/Respondent by himself, his servants agents or otherwise howsoever be restrained from trespassing, selling, leasing or in any other manner alienating or interfering with Plot. No. 1193/0082, also referred as Plot No.1193/82 Mukuyu Market or Plot No. Loc.II/Maragi/1193/82.
 - d. That the costs of this application be provided for.
2. It is supported by the affidavit of Benson Maina Gathithi Mugi and the following grounds;
 - a. The Defendant/Respondent has illegally and mysteriously had the suit property transferred to him.
 - b. The Defendant/Respondent intends, unless restrained by this Honourable Court, to trespass on Plot. No. 1193/0082, also referred as Plot No. 1193/82 Mukuyu Market or Plot No. Loc.11/Maragi/1193/82, and destabilizing the tenancy over the said plot.
 - c. The Defendant/Respondent may mysteriously transfer or otherwise alienate Plot No. 1193/0082, also referred as Plot No. 1193/Makuyu Market or Plot No. Loc.II/Maragi/1193/82.
3. In opposing the application, the 1st Defendant/Respondent filed grounds of opposition on the 9/12/2016 on the following grounds;
 - a. The Plaintiffs have no legal capacity or authority to file this suit or the application itself.
 - b. The Defendant, being the registered proprietor of the premises, cannot be enjoined as sought as this would amount to interference with his rights as a proprietor without justifiable cause.
 - c. The Defendant obtained ownership of the plot for valuable consideration after purchasing the same from KANU authorized officials.
 - d. Not being the registered proprietors of the property, the Applicants have no legal justification to demand that the defendant's tenant pays them rent.
4. The 2nd Defendant did not file any response to the application.
5. The Respondent deponed in his replying affidavit filed on the 14.12.2016 that the suit premise was allocated to KANU the party on 5/11/1994, which KANU party through the national office sold the aforesaid suit property to him on the 13/9/2016 for valuable consideration. He attached an agreement for sale to support his averment. Thereafter KANU head office wrote to the Murang'a County Government informing them of the sale and asking for approval of the transfer to him which was given vide the transfer form marked JSNM3 attached.
6. Further he avers that the said transfer was recognized by the KANU Kiharu Branch vide their letters dated the 23/11/2016 and 25/11/2016 and marked as JSNM 4-6. That in one of the letters dated the 23/11/2016, the KANU Kiharu branch advised the tenant, Mr. Simon Macharia Kairu to pay the rent to me in recognition of the transfer of the suit property.

7. Parties have filed their written submissions which I have reviewed.

8. The issue that commends itself to this Court is whether the applicant has established a prima facie case as set out in the celebrated case of **Giella Vs Cassman Brown and Co. Ltd (1973) EA 358**. In that case the requirements necessary before the Court can grant an interlocutory injunction are;

“ that firstly, an applicant must show a prima facie case with a probability of success, secondly an interlocutory 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, and thirdly, if the court is in doubt, it will decide an application on a balance of convenience.”

In the case of **Mrao Vs First American Bank of Kenya Ltd & Two others C.A. No. 39 of 2002 (2003 eKLR)** a prima facie case is defined in the following terms;

“A *prima facie* case in a civil application include but is not confined to a genuine and arguable case. It 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.”

9. In this case the Applicants have averred that they are the delegates of KANU Kiharu branch who are the registered owners of the suit property since 1970s. They state that their members raised funds to build an office block on the suit land which they rent out and receive rental income. One such tenant is Simon Macharia Kairu. The Applicants have not attached any documentation to show that indeed they are KANU delegates or members for that matter. In an earlier application they did attach special delegates conference cards dating back to 2013. It is on record that the KANU head office is now the 2nd defendant in the case and therefore the issue of locus is one that I leave to the trial Court.

10. Further it is on record that the Applicants are aware that the suit land was sold to the respondent by the KANU office the 2nd defendant. There is correspondence on record allegedly from the Applicants stating that they have sold the suit land to the Respondent and directing the aforesated tenant to remit the rent to new owner. This is a point of contention in the main suit which again I hesitate to touch at this point. The Applicants have not attached any documents to vouch for their right of ownership if any in the suit property.

11. From the above reasons, I hold and find that the applicants have not established a prima facie case and decline to grant the application. I do not need to look at the other two limbs.

12. In the end the application is dismissed with costs to the 1st Respondent/Defendant.

DATED, DELIVERED AND SIGNED THIS 23RD DAY OF NOVEMBER 2017.

J.G. KEMEI

JUDGE