

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 685 OF 2017

GENERAL REALTY COMPANY LIMITED.....PLAINTIFF

VERSUS

DA LI.....1ST DEFENDANT

FOTON EAST AFRICA LIMITED.....2ND DEFENDANT

RULING

The Plaintiff seeks a declaration that it is the legal owner of the development on L.R. No. 3734/1148 on Gitanga Road Nairobi (“the Suit Property”). It also seeks an injunction to restrain the Defendants or their agents from trespassing or remaining on the Suit Property pending hearing and determination of this suit. The Plaintiff wishes to have the order enforced by the Officer Commanding Kilimani Police Station. In addition, the Plaintiff seeks an order of eviction against the occupiers of the 7 bedroomed double storeyed house erected on the Suit Property.

The Plaintiff claims that it is the legal owner of the Suit Property having bought it at a public auction conducted by Garam Investment Auctioneers on 4/7/2017 at the price of Kshs. 100 million. The Plaintiff claims the Defendant was served with the statutory notices contemplated by the Land Act and that despite written demand to vacate the Suit Property; the Defendants have failed to vacate the Suit Property. The Defendants were served but did not enter appearance.

The Plaintiffs relied on the case of **Maher Unissa Karim v Edward Oluoch Odumbe** (2015) eKLR and **Ahmed Ibrahim Suleiman and Another v Noor Hamisi Surur** (2013) eKLR in which the court reiterated that a mandatory injunction ought not to be granted on an interlocutory application unless there are special circumstances and only in clear cases where the court thinks the matter should be decided at once. The court observed that before granting a mandatory injunction, the court needs to assure itself that at the trial it would appear that the injunction had been rightfully granted.

The Plaintiff urges the court to grant a mandatory injunction since a delay in determining the issue will cause the Plaintiff to suffer prejudice yet there has been no challenge to the sale that took place.

The court has looked at the affidavit and documents in support of the application and is not persuaded that this is a clear case which ought to be decided at once. There is no evidence of payment of the purchase price of Kshs. 100 million. The matter ought to proceed for trial. The court grants prayers 4 and 5 of the application dated 31/10/2017. The Plaintiff will have the costs of the application.

Dated and delivered at Nairobi this 22nd day of December 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Chengecha for the Plaintiff

No appearance for the Defendants

