



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. CASE NO. 1217 OF 2013**

**KIOKO NZYOKA.....PLAINTIFF/APPLICANT**

**VERSUS**

**NAIROBI CITY COUNTY.....DEFENDANT/RESPONDENT**

**RULING**

Coming up before me for determination is the Notice of Motion dated 9<sup>th</sup> October 2013 in which the Plaintiff/Applicant seeks for orders of temporary injunction restraining the Defendant from harassing, evicting, trespassing upon, demolishing or in any other manner whatsoever interfering with the parcel of land known as Plot No. D2-386 Kayole Site and Service Scheme (hereinafter referred to as the “suit property”) pending the hearing and determination of this application and suit.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff/Applicant, Kioko Nzyoka, sworn on 9<sup>th</sup> October 2013 in which he averred that he is the beneficial owner of the suit property after purchasing it from one Christopher Njogu K for valuable consideration of Kshs. 400,000/-. He annexed a copy of the sale agreement dated 17<sup>th</sup> October 2007. He averred that he received various documents from the said Christopher Njogu K evidencing ownership of the suit property namely plot ownership card, power of attorney, application for consent to transfer dated 18<sup>th</sup> October 2007 and application for certificate of clearance dated 18<sup>th</sup> October 2007, copies of which he annexed. He added that he subsequently received from the Defendant a payment clearance certificate of rates and ground rent for the suit property in the name of Christopher Njogu K, copies of which he annexed. He further averred that on 11<sup>th</sup> October 2012, he applied for a beacon certificate for the suit property in the name of Christopher Njogu K which was issued by the Defendant on 30<sup>th</sup> October 2012. He further indicated that he paid ground rent and rates for the suit property and annexed copies of the receipts issued. He confirmed having taken possession of the suit property and started to construct shops thereon in December 2012. He further averred that on 3<sup>rd</sup> October 2013, the Defendant demolished part of his shops without any colour of right which was illegal and irregular because he was never served with a notice of intention to demolish his shops and further that the Defendant had not held any general council meeting to deliberate and decide to demolish his shops on the suit property. He concluded by stating that unless the injunctive order is issued, he will continue to suffer irreparable loss and damage as a result of the Defendant’s act of demolition and evicting him from the suit property.

The Application is unopposed.

All the parties herein filed their respective submissions which have been read and taken into account in this Ruling.

I am required to determine whether the Plaintiff/Applicant is entitled to an order of temporary injunction which he seeks. In deciding whether or not to grant the temporary injunction, I wish to refer to and rely on the precedent set out in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

**“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”**

Has the Plaintiff made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

**“a prima facie case in a Civil Application includes 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.”**

Does the Plaintiff/Applicant have a ‘genuine and arguable case’? In this case, the Plaintiff lays claim to the suit property as his property, on the basis that he purchased the same from someone called Christopher Njogu K. All the documents that he has annexed, except the sale agreement, and upon which he relies in his claim of ownership of the suit property are all in the name of the said Christopher Njogu K. It is noteworthy in this Application that the Plaintiff/Applicant admitted that he is yet to transfer the suit property into his name. In the circumstances, the Plaintiff/Applicant has failed to convince this court that he is the owner of the suit property with a prima facie case and high chances of success at the main trial.

Since the Plaintiff has failed to prove the first ground in the grounds set down in the celebrated case of **Giella versus Cassman Brown**, this Honourable Court need not venture into the other grounds. This position was upheld in the Court of Appeal case of **Kenya Commercial Finance Co. Ltd versus Afraha Education Society (2001) 1 EA 86** as follows:

**“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is ... sequential so that the second condition can only be addressed if the first one is satisfied...”**

In light of the foregoing, I hereby dismiss this Application with costs to the Defendants.

**DELIVERED AND SIGNED IN NAIROBI THIS 25<sup>TH</sup>**

**DAY OF SEPTEMBER 2015.**

**MARY M. GITUMBI**

**JUDGE**