



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. CASE NO. 171 OF 2014**

JANET MBOLI .....1<sup>ST</sup> PLAINTIFF  
VINCENT MUTUKU.....2<sup>ND</sup> PLAINTIFF  
  
VERSUS  
  
NAIROBI CITY COUNCIL..... DEFENDANT

**RULING**

Coming up before me for determination is the Notice of Motion dated 18<sup>th</sup> February 2014 in which the Plaintiffs/Applicants seek for orders of temporary injunction restraining the Defendant from evicting, interfering with the Plaintiffs' quiet possession, demolishing, selling, transferring, leasing or in any way dealing with Market Stalls Nos. S143C, S144 and 145 situated in Komarock East Housing Estate Nairobi (hereinafter referred to as the "suit premises") pending the hearing and determination of this Application and suit. The Plaintiffs/Applicants also seek for orders that the Officer Commanding Police Division, Kayole be ordered to effect the court's orders and that the costs of this Application be paid by the Defendant.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the 2<sup>nd</sup> Plaintiff, Vincent Mutuku, sworn on 18<sup>th</sup> February 2014 in which he averred that both he and the 1<sup>st</sup> Plaintiff were allotted the suit premises by the Defendant on 24<sup>th</sup> August 1986. He produced copies of a Letter of Allotment dated 24<sup>th</sup> August 1986 allocating Market Stall No. 145 to himself and another Letter of Allotment bearing the same date allocating Market Stall No. S144 to the 1<sup>st</sup> Plaintiff. He further averred that since allocation of the said market stalls, they have invested heavily and made several developments thereon. He further averred that on or about 12<sup>th</sup> February 2014, there persons who identified themselves as agents or employees of the Defendant came to the suit premises and verbally threatened them indicating that the Defendant is intent on demolishing the stalls. He further stated that efforts to get any further information or an enforcement notice from the Defendant have not been successful. He further averred that the suit premises are their only source of livelihood and they are reasonably apprehensive that unless stopped, the Defendant's threats will materialize leading in their eviction and the demolition of their stalls.

The Application is not opposed.

In deciding whether 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.”

Have the Plaintiffs/Applicants 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.”**

In determining whether the Plaintiffs/Applicants have established a prima facie case, I must consider the documents of title produced by them in support of their claim of ownership of the suit premises. The documents produced to this court are two letters of allotment both dated 24<sup>th</sup> August 1986 in respect of Market Stall Nos. S144 and 145 within Komarock East Housing Estate. No letter of allotment was produced for Market Stall No. S143C. In the absence of any controverting evidence, I find that the Plaintiffs/Applicants have established a prima facie case with high chances of success at the main trial.

Does an award of damages suffice to the Plaintiffs/Applicants? Land is unique and no one parcel can be equated in value to another. The value of the suit property can be ascertained. However, it would not be right to say that the Plaintiffs can be compensated in damages. I hold the view that damages are not always a suitable remedy where the Plaintiff has established a clear legal right or breach. See **JM GICHANGA versus CO-OPERATIVE BANK OF KENYA LTD (2005) eKLR**.

Being not in doubt, I see no reason to determine in whose favour the balance of convenience tilts.

Arising from the foregoing, I hereby allow the Application with the exclusion of Market Stall No. S143C in respect of which no ownership documents were produced. Costs shall be in the cause.

**SIGNED AND DELIVERED IN NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2014.**

**MARY M. GITUMBI**

**JUDGE**