



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 52 OF 2014

PETER PATRICK NG'ANG'A NJOROGE.....PLAINTIFF/APPLICANT

VERSUS

PAUL CHEGE MWANGI..... DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Motion dated 6th January 2014 in which the Plaintiff/Applicant seeks for orders of temporary injunction restraining the Defendant/Respondent from interfering with the Plaintiff's possession, occupation and use of Plot No. 16 Gichagi Trading Centre in Ngong (hereinafter referred to as the "suit property") pending the hearing and determination of this suit.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff, Peter Patrick Njoroge, sworn on 6th January 2014 in which he averred that the suit property was allocated to his deceased mother in the year 1991 upon which he took possession and constructed some houses in which he lived together with his mother and his sister. He further averred that he has been in peaceful, quiet and continuous occupation of the suit property since 1991 to date. He confirmed that the Defendant owns Plot Number 17 which is adjacent to the suit property. He further disclosed that his mother died in the year 2007 before receiving the formal allotment letters for the suit property and that both he and his sister have been following up formal allocation letters from the then County Council of Olkejuado. He further stated that in the year 2012, he learnt from the then County Council of Olkejuado that the suit property was allocated to the Defendant in the year 1999. He further stated that the Defendant has now started to lay claim over the suit property, purporting to be its owner, thereby prompting him to file this suit to claim the suit property under the doctrine of adverse possession. He added that the Defendant intends to evict him from the suit property and has started to use the local administration and police to harass him to leave the suit property. He further stated that if evicted, he stands to suffer heavy loss and damage in that he shall be rendered landless and homeless.

The Application is contested. The Defendant filed his Replying Affidavit sworn on 21st February 2014 wherein he averred that he is the proprietor of the suit property having been allocated the same by the then Olkejuado County Council. As proof of that assertion, he attached a copy of his allotment letter from Olkejuado County Council dated 22nd August 1991 and a confirmation of ownership letter dated 19th February 2014 from the County Government of Kajiado confirming that he is the owner of the suit property. He contended that it is therefore untrue that the suit property was ever allocated to the Plaintiff's mother as alleged by the Plaintiff. He disputed the Plaintiff's assertion of having been in possession and

use of the suit property since 1991 and instead asserted that it is the Plaintiff's mother who was laying claim over the suit property but that he resisted that claim as he is the lawful owner thereof. He further asserted that sometimes in the year 1999, He wrote a letter to the Plaintiff's mother informing her that the suit property was allocated to him and that she was interfering with his peaceful possession thereof. He annexed a copy of that letter which is dated 10th June 1999. He added that the Plaintiff's mother requested for time to look for an alternative home and eventually vacated the suit property. He further confirmed that he owns Plot No. 17 which is adjacent to the suit property. He confirmed having built a site house and delivered building materials on the suit property but stated that the Plaintiff was blocking his plans to develop the suit property. He confirmed that the Plaintiff has engaged the local administration with his claim over the suit property but failed to produce any ownership documents bearing either his name or the name of this late mother. He confirmed that he is merely rightfully and lawfully enforcing his rights over his property and the same does not amount to harassment and or eviction as claimed by the Plaintiff/Applicant.

Both the Plaintiff and the Defendant filed their written submissions which have been read and taken into account in this ruling.

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.”

In this case, the Plaintiff at first stated that the suit property was allocated to his late mother but subsequently claimed that it belongs to him. The Plaintiff has however not produced to this court any documentary evidence in support thereof. The Plaintiff now claims to be entitled to the suit property through the operation of the doctrine of adverse possession, claiming to have been in possession of the suit property from the year 1991. The Defendant however makes a rival claim of ownership of the suit property and in support thereof, has produced to this court documentary evidence in support of his claim. One of the supporting documents is a letter of allocation from the then Olkejuado County Council. Another is a letter from the County Government of Kajiado confirming that according to their records, the Defendant is reflected as the owner of the suit property. Further, the Defendant has produced a copy of his handwritten letter to the Plaintiff's mother known as Susan Wangare Njoroge dated 10th June 1999, requiring her to vacate the suit property as it belongs to him. This shows that the Defendant asserted his ownership rights over the suit property well before the Plaintiff had been in possession of the suit property over the full statutory period of 12 years. This leads to my finding that in all probability, the suit property does not belong to the Plaintiff but to the Defendant. On that count therefore, the Plaintiff has failed to establish that he has a prima facie case with 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. Costs shall be in the cause.

DELIVERED AND SIGNED IN NAIROBI THIS 31ST DAY OF OCTOBER 2014.

MARY M. GITUMBI

JUDGE