



Case Number:	Environment and Land Case 114 of 2016
Date Delivered:	14 Sep 2016
Case Class:	Civil
Court:	Environment and Land Court at Meru
Case Action:	Ruling
Judge:	Peter Muchoki Njoroge
Citation:	John Nkonge M'Arithi & 2 others v Peninah Nkatha & another [2016] eKLR
Advocates:	Mr. Ken Muriuki for the Defendants'
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	Meru
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ENVIRONMENT AND LAND CASE NO 114 OF 2016

JOHN NKONGE M'ARITHI..... 1ST PLAINTIFF

MAGDALINE NYAMBURA..... 2ND PLAINTIFF

JOYCE MBOYA..... 3RD PLAINTIFF

VERSUS

PENINAH NKATHA.....1ST DEFENDANT

CHRIS KINYUA WANJAGI..... 2ND DEFENDANT

RULING

1. The main application in this matter is dated 27th July, 2016. It seeks orders:-

(1). ***THAT this Application be certified urgent and the same be heard exparte in the first instance.***

(2). ***THAT an order of temporary injunction do issue restraining the 1st Respondent, whether by her agents, servants or anybody acting on her behest from subjecting the Applicants to any annoyance or harassment with the intention of compelling the Plaintiff/Applicants to vacate the demised premises on PLOT NO. NTIMA/IGOKI/2079 pending the interpartes hearing of the application.***

(3). ***THAT an order of temporary injunction do issue restraining the 1st Respondent, whether by herself, her agents, servants or anybody acting on her behest from subjecting the Applicants to any annoyance or harassment with the intention of compelling the Plaintiff/Applicants to vacate the demised premises on PLOT NO. NTIMA/IGOKI/2079 pending the hearing and determination of the application herein.***

(4). ***THAT an order of temporary injunction do issue restraining the 1st Respondent, whether by herself, her agents, servants or anybody acting on her behest from subjecting the Applicant to any annoyance or harassment with the intention of compelling the Plaintiff/Applicant to vacate the demised premises on PLOT NO. NTIMA/IGOKI/2079 pending the hearing and determination of the suit herein.***

(5). ***THAT costs of this application be borne by the Defendants /Respondents.***

2. The Application is supported by the Affidavit of the 1st Applicant and has the following grounds:-

(1). ***THAT the Applicants are protected tenants by law on PLOT NO. NTIMA/IGOKI/2079.***

(2.) ***THAT the Applicants were served with two notices dated 23/06/2016 and 08/07/2016 requiring***

them to vacate the demised premises by 31/07/2016.

(3). THAT the two notices are contrary to the provisions of CAP 301 Laws of Kenya and thus illegal.

(4). THAT the tenants have been performing their obligations for the last 13 years or so and they have invested massively on the demised premises.

(5). THAT the Applicants risk being evicted from the premises as a result of which they would incur irreparable loss and damage.

(6). THAT it is in the interest of justice that the orders sought herein be granted.

3. The Application was slated for Interpartes hearing on 14/09/2016 as the Plaintiffs sought time to respond to the Replying Affidavit filed by the Defendants.

4. Mr. Ken Muriuki, the Defendants' Advocate told the Court that there were Affidavits sworn by the 2nd and 3rd Plaintiffs stating that the 1st Plaintiff did not have authority to file this suit on their behalf. The 2nd and 3rd Plaintiffs told the Court that they were misled by the 1st Plaintiff to sign a document which they thought was directed to the Defendants asking them to extend their stay in the suit premises. They were categorical that they had no intention of filing a suit. They also told the Court that they had moved out of the Suit premises.

5. Mr. Muriuki told the Court that extension of Interim Orders was not tenable because the orders were not served upon the Defendants within the required 3 days but were served about a month and a week since 28/07/2016 when they were issued.

6. Mr. Muriuki asked the Court to direct that the Defendants Preliminary Objection dated 9th September, 2016 be heard expeditiously.

7. The 1st Plaintiff informed the Court that he was willing to vacate the suit premises by 13th December, 2016.

8. The following orders are issued:-

(1) 1st Plaintiff allowed 21 days to file further responses and Parties allowed leave to further respond as and if necessary.

(2) INTERIM ORDERS not extended .

(3) Preliminary Objection dated 9th September, 2016 to be heard by way of Written Submissions with the Defendants doing so within 21 days of today and the Plaintiff to do so within 21 days after receipt of the Defendants' Written Submissions.

(4) Status Quo be maintained so that the 1st Plaintiff only continues to use the part of the suit premises he had been using before Institution of this suit.

(5) Directions on 29/11/2016.

(6) Formal Ruling delivered in Court.

9. It is so ordered.

10. Costs shall be in the cause.

DELIVERED IN OPEN COURT THIS 14TH DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-

CC: Daniel/ Lilian

Ringera h/b Murithi for the Plaintiffs

Muriuki for Defendants

P. M. NJOROGE

JUDGE



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