



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI - MILIMANI**

**ELC CASE NO. E008 OF 2022**

**MAKTON HOLDINGS LIMITED.....PLAINTIFF**

**=VERSUS=**

**JOHN WAWERU alias SIMON WAITHIRA.....DEFENDANT**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> INTERESTED PARTY**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

**(Notice of motion dated 18<sup>th</sup> January 2022)**

**Introduction**

1. The Plaintiff through the Notice of Motion Application dated 18<sup>th</sup> January 2022 seeks for an order of temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent either by himself, his servants, workers, agents and or employees from interfering, trespassing, alienating, selling, transferring or in any other manner dealing or disposing off the property known as title No.67822/1, L.R No. 7785/55 (original 7785/10/378) as delineated on land survey plan number 181754 situated at Runda along Runda Crescent Road (hereinafter referred to as ‘the suit property’) or any part thereof.
2. The Application is premised on the 9 grounds on the face of it and on the supporting affidavit of Mohammed Nyaoga.

**The Plaintiff/Applicant’s Case**

3. In his oral submissions before the court, the plaintiff’s Advocate Mr. Nkarichia reiterated the averments contained in the application urging the court to grant the orders sought by the Plaintiff. The plaintiff’s case is that, it is the registered and legal owner of the suit property. The Plaintiff has exhibited a copy of the title to the property being ‘MN-04’. A copy of a search of the suit property also confirms the status of the suit property as at the 17<sup>th</sup> January 2022.
4. The Plaintiff claims that the 1<sup>st</sup> Defendant/Respondent has on several occasions trespassed into the suit property and has even brought sand and other materials clearly signaling his intentions to illegally lay claim over it and erect a structure thereon. The agents of the 1<sup>st</sup> Respondent, while they were being ejected from the suit property claimed that the 1<sup>st</sup> Defendant was the registered proprietor of the suit property and intended to commence construction on it within a week.
5. The Plaintiff is afraid that the 1<sup>st</sup> Defendant may forcefully take over his property as he has severally attempted to do already. That is why he has come to seek the protection of this court.
6. The Plaintiff’s Advocate cited a number of authorities including **Giella Vs Cassman Brown & Co. Ltd, Mrao Vs 1<sup>st</sup> American Bank, Tritex Industries ltd and 3 others Vs National Housing Corporation, Mbuthia Vs Jimba Credit Finance Corporation & Robert Mugo Wa Karanja VS ECO Bank & Another** to buttress his submissions.

**Court’s Determination**

7. The principles upon which a court must base its decision whether to grant or not, an order of temporary injunction are now settled since

the decision in the case of Giella Vs Cassman Brown.

8. On the question whether the plaintiff has established a prima facie case, this court has no difficulty in answering the same in the affirmative. Section 26 of the Land Registration Act is clear that a certificate of title shall be taken by all courts as prima facie evidence that the person named as the proprietor of the land is the absolute and indefeasible owner of the land.

9. The Plaintiff has not only exhibited the title of the suit property and a current search of the title but also an earlier search 'MN -05' showing that it had even used the title as a security by charging it in favour of Southern Credit Banking Corporation Ltd.

10. The Plaintiff further claims that it is likely to suffer irreparable harm unless the order of temporary injunction sought is granted. The deponent of the supporting affidavit has explained that the 1<sup>st</sup> Defendant has on occasions invaded the suit property and even gone ahead to collect building materials on the property. In fact, on 14<sup>th</sup> January 2022, the deponent states that a group of individuals allegedly sent by the 1<sup>st</sup> Defendant had attempted to forcefully gain access to the suit property but were repelled by the guards stationed at the site of the suit property by the Plaintiff. Their intention as they said, was to commence construction on the suit property.

11. This court finds that the plaintiff's fears are not mere apprehensions. The 1<sup>st</sup> Defendant through his repeated actions has clearly demonstrated his intentions to forcefully take over the suit property and commence construction. I am persuaded that indeed, the Plaintiff stands to suffer irreparable harm that may not be compensated by an award of damages unless an order of temporary injunction is granted pending the hearing and determination of the suit.

12. The Plaintiff has established on the face of it that he has a right that deserves protection. In arriving at this decision, I am guided by the Court of Appeal dictum in the case of **Mbuthia Vs Jimba Credit Finance Corporation & Another (1988) KLR** and the case of **Robert Mugo Wa Karanja (Supra)** both cited by the Plaintiff's Advocate.

13. The upshot is that the Plaintiff's application is allowed as prayed. Costs of this application shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY 2022.**

**M.D. MWANGI**

**JUDGE**

In the Virtual Presence of:-

Mr. Nkarichai for the Plaintiff/Applicant

N/A for the Defendant/Respondent

N/A for the Interested Parties

Court Assistant: Hilda

**M.D. MWANGI**

**JUDGE**