



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

ELC NO. 104 OF 2013

PATRICK MITHIKA.....PLAINTIFF

VERSUS

JOSHUA MANGATI.....DEFENDANT

**RULING**

This applicative is dated 18th April, 2013 and seeks orders:

- 1. That this motion be certified urgent and be heard ex-parte in the first instance.***
- 2. That pending inter-partes hearing of this motion, an order of injunction do issue restraining the Respondent/Defendant by himself, his agent, workmen or representative from entering into, cultivating or building any structure thereon or in any manner interfere with the suit land.***
- 3. That pending the hearing and determination of this suit, an order of injunction do issue restraining the defendant by himself, his agents workmen or representatives from entering into, cultivating, building or in any manner whatsoever interfere with the suit land.***
- 4. Costs of the motion be paid by the defendant.***

The application is supported by the following grounds;

- 1. The defendant is using force to build a house(s) on the suit land.***
- 2. The suit land, which is the property of the plaintiff is being wasted, damaged and alienated by the defendant***
- 3. That the plaintiff will suffer irreparable loss if the defendant is not enjoined and stopped from his acts of waste.***

The plaintiff's case is that he owns a parcel of land measuring about 23 acres at Maili Tano area of Munanda Tatu Sub location in Isiolo under customary tenure. He says that he has been in open continuous and exclusive possession of the land since 1977. He complains that on 20.3.2013, the defendant unlawfully and without any colour of light entered the land and started dropping materials in form of stones and sand. He had thereafter cleared trees and shrubs in order to build a house and had caused serious waste and damage to the plaintiff's land which he, inter alia, used to graze his livestock whose lives had been endangered by the action of the defendant. He contends that he will suffer

irreparable loss if the injunctive orders sought are not granted.

The respondent has opposed the application. He says that the plaintiff and the respondent are claiming different lands. He proffers that the plaintiff claims unregistered unsurveyed land while the respondent claims registered Land Parcel No. 2150 RUIRI/RWARERA ADJUICATION SECTION.

The parties have made assertions and counter assertions. The applicant claims that a Judgment in JR 344 of 2003 had quashed the inclusion of the area where the suit land is situate from being included in the Ruiru/Rwarera Adjudication Section. The respondent claims otherwise.

I need not reinvent the wheel. The court of appeal in the case of **MBUTHIA-VS-JIMBA CREDIT CORPORATION AND ANOTHER [1988] KLRI** opined as follows:

***“The correct approach in dealing with an application for an interlocutory injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side's propositions. The lower court judge in this case had gone far beyond his proper duties and made final findings of fact on disputed affidavits.”***

Many of the issues raised by the parties can not be determined at this interlocutory stage. I have considered the averments, submissions and the authorities proffered herein. Having weighed the relevant strength of each sides propositions, I find that the applicant has satisfied all the ingredients enunciated by the case of **Giela Versus Cassman Brown & Co. Ltd (1973) EA 358** for grant of an Interlocutory Injunction: I find that he stands to suffer irreparable damage should his suit eventually succeed.

In the circumstances, tis application is allowed. Prayer 3 is confirmed.

Costs shall be in the cause.

**Delivered in Open Court at Meru this 14th day of January 2015 in the presence of:**

Cc Daniel/Lilian

Kiambi h/b defendant/respondent

Mutembei h/b Murango Mwenda for Plaintiff/Applicant

**P. M. NJORORGE**

**JUDGE**