



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**ELC CASE NO.3 OF 2014**

**PHILIP KIBET TONUUI ..... PLAINTIFF**

**VERSUS**

**MAVOKO LAND DEVELOPMENT CO. LTD..... DEFENDANT**

**RULING**

1. The **Motion** for ruling is dated **21.1.2014** seeking injunctive relief against Defendant pending hearing and determination of the instant suit over **Plot No.33 Kasina Mlolongo**. The same is based on the grounds that the same plot belongs to the Applicant and the Defendant has stopped construction by the Plaintiff on the same plot. The Application is supported by the Affidavit of Philip Kibet Tonui sworn on 21.1.2014 and his supplementary Affidavit sworn on 3.11.2014.
2. The Application is opposed by the Defendant and there are replying affidavit sworn on 27.1.2014 and further affidavit sworn on 17.10.2014 both by Solomon Mbote Githinji director of the Defendant. The Applicant avers that he bought Plot No.33 Kasina Mlolongo from Nicholas Muchene Njau on 31.8.06. He avers that the same plot is within LR. No.11895/27. He took possession of the same and obtained Mavoko Municipal Council permission to develop it.
3. However, the Defendant's agent invaded same plot and stopped construction. He avers that the Defendants are owners of LR.25062. Plot No.33 is a sub-division of LR.11895/25 (895/35). There is a running dispute between Defendant and Kasina Housing Scheme Society, thus numerous suits.
4. There is a surveyor report which created 2 parcels of land dated 6.5.2010. There exists plot No.LR.11895/34 between parcels owned by the Defendant and Kasina Housing Scheme Society. Suit No. HCC.366/09 Machakos is between Defendant and Kasina Housing Scheme Society. There is a Director of Surveyor's report already filed on boundary dispute which defendant has never challenged but instead the Defendant is challenging Kasina Housing Scheme Society title. The Plaintiff does not challenge the Defendants ownership to LR.25062. Neither is Plaintiff a member or shareholder of the Defendant.
5. The Plaintiff says that LR.No.11898/27 was surrendered to Director Physical Planning on 14.12.07 to facilitate subdivision. The Applicant thus submits he has established that he has met the threshold set in **GIELLA Case** in grant of interim injunction and thus prays for the orders.
6. The Respondent reply is that it owns LR.No.25062 which is 17.58 HA at Mlolongo Market and the Plaintiff is not a member of the Defendant. The Plaintiff alleges to own plot from LR.No.11895/27 which is claimed to be owned by Kasina Housing Scheme Society. The scheme parcel number does not exist. The society Kasina Housing Scheme Society was registered in 2005 and the alleged title was registered and obtained in 1992 before Kasina Housing Scheme Society existed. The same society Kasina is having 2 lease hold in the same names; but different acreages. The Plaintiff allotment is for unsurveyed Plot No.33 which does not show where same

originated from. The said task force report on LR.No.11895/27 recommended same be investigated as it was suspect.

7. The Kasina Housing Scheme Society changed title from LR.11895/27 to 11895/35. How would title change without subdivision? The Defendant submits that the same changes demonstrate fraud or forgery perse. The Plaintiff trespass on LR.No.25062 is unjustified and thus the threshold of granting interim injunction has not been met and thus the motion must fail. The Defendant relies and cites **GIELLA –VS- CASSMAN BROWN & CO. LTD (1973) EA 358**.
8. After going through the materials before the court, I make the following findings:

The Plaintiff claims to own Plot No.33 Athi River which he bought from Nicholas Muchene Njau on 5.9.06 vide an agreement, there is also a handwritten agreement dated 31.8.06 which was entered by the same parties are the same Plot No.33 Kasina Mlolongo a letter of allotment dated 14.12.07 shows same plot 33 (Kasina Mlolongo) Athi River was issued to the Plaintiff. However, no document is securing the relationship between the said plot and the Kasina alleged title LR.No.11895/27.

9. The Applicant alleges to have bought from somebody else but did not acquire directly from the Kasina Housing Scheme Society title is alleged to be 11895/27 and also 11895/35 a letter dated 16.8.05 by Commissioner of Lands to Ms. Kavila Advocates ... stated that the LR.No.118895/27 to be a forgery. Task report of December, 2011 an irregular appropriation of public land and squatter problem in Athi River District noted that the Kasina Housing Scheme Society held 2 titles with different acreages dated 1992 even before it was registered. There was recommendation the matter over same be pursued in court and the Commissioner of Lands to establish authenticity of title.
10. It is also not denied that Kasina Housing Scheme Society is having disputes in court with the Defendant over the same subject matter. The Plaintiff case founded on the Kasina Housing Scheme Society title is on shifting sand until Kasina can sanctify its title from the anomalies noted. If the Kasina title is to be found to be a forgery as evidence suggests, the Plaintiff's claim will collapse automatically. The Plaintiff may have to take earliest opportunity to sue Kasina and the vendor to safeguard his interest.
11. In the circumstances of the case herein and the foregoing findings, the court finds that the threshold set by **GIELLA CASE *Supra*** has not been met and find no merit in Applicant's application. The court thus makes the following orders:
  1. The application dated 21.1.2014 is dismissed.
  2. Costs to the Defendant/Respondent.

**Dated and Delivered at Machakos, this 20<sup>th</sup> day of February, 2015.**

**CHARLES KARIUKI**

**JUDGE**