



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**E.L.C. NO 261 OF 2015**

**MUTHIKE MITAMBO.....PLAINTIFF/APPLICANT**

**VERSUS**

**JOHN MURIUKI JACOB.....RESPONDENT/DEFENDANT**

**RULING**

1. The applicant through his notice of motion dated 9<sup>th</sup> February, 2015 has applied for a temporary injunction stopping the defendant from interfering, cutting down trees, cultivating the suit land plot number 335 Makima Adjudication Section pending the hearing and determination of this application.
2. Additionally, he has sought an order directing the OCS in charge of Kiritiri Police Station to enforce the orders which the court may issue. In support of his application, he has annexed a supporting affidavit.
3. The application is unopposed. The defendant was properly served and there is a return of service dated 6<sup>th</sup> March, 2015. It is for this reason that the hearing of the application proceeded *ex-parte*. According to the plaintiff, he is the registered owner of plot number 335 Makima Adjudication Section. He has stated in his supporting affidavit he has not been issued with the title deed.
4. According to him, the defendant has been a hindrance to his plans to develop the suit land because the defendant is illegally in occupation. And for that reason, he cannot access the suit land. Despite being served with a demand notice to vacate the suit land, the defendant has refused to do so.
5. Finally, the plaintiff has stated that unless the defendant is restrained from interfering with the suit land, he may not be able to prepare the suit land for planting. And he also says that there is a possibility of serious fight between him and the defendant unless a temporary injunction is issued.
6. The law that governs that governs the issuance of a temporary injunction is found in Order 40 of the 2010 Civil Procedure Rules. The provisions of that Order were interpreted and approved in the celebrated case of *Giella v Cassman Brown & Co Ltd (1973) EA 358*. According to that case, an applicant for a temporary injunction must satisfy the following conditions:
  1. ***That he has a prima facie case which has a probability of success.***
  2. ***That if the injunction sought is not granted the applicant might suffer irreparable damage which damage is unlikely to be compensated by way of damages.***

***3. If the two conditions raised above raise doubt in the mind of the court, the court is required to decide the application on a balance of convenience.***

7. I have considered the affidavit evidence and the applicable law and I find that the issues for determination in this case are as follows:

1. Whether or not the plaintiff has made out a case for the grant of a temporary injunction.

2. Whether or not the court should make an order providing for the costs of this application.

8. I have considered the affidavit evidence, the applicable law and the submissions of counsel for the plaintiff. I find that the defendant is in occupation of the suit land. I also find that the suit land is still under adjudication in its final stages.

9. I therefore find that the plaintiff has not made out a case for the grant of a temporary injunction. The reason being that the defendant is in occupation of the suit land. If the said order were granted, it would amount to evicting the defendant from the suit land. This would bring an end to the litigation in this case.

10. In the circumstances, the application of the plaintiff is hereby dismissed. The costs of this application will be costs in cause.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **22<sup>nd</sup>** day of **APRIL 2015**.

In the presence of Mr Njoroge holding brief for Mr Mungai.

Court clerk Mr Muriithi

**J.M. BWONWONGA**

**JUDGE**