



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ELC CASE NO. 111/2013

HUSSEIN NOOR ALI HAJI.....1ST PLAINTIFF

RASHID MAALIM ISAAC.....2ND PLAINTIFF

VERSUS

ABDI TARI ABKULA.....DEFENDANT

RULING

This application is dated 24th April, 2013. It seeks the following orders:

1. ***THAT this application be certified as urgent and be heard expare in the first instance.***
2. ***THAT pending the hearing and determination of this application a temporary Order of Injunction be issued restraining the Defendant/Respondent whether by himself, his agents, servants, assigns, legal representatives or through anybody else whomsoever from entering into, cultivating, building structures, wasting, encroaching, alienating or in any other manner interfering with the Plaintiffs user, occupation and possession of Plot No. GARBA/B/ISIOLO also known as ISL/117/98/397 measuring 6 acres situated within Isiolo County.***
3. ***THAT pending the hearing and determination of this application a temporary Order of Injunction be issued restraining the Defendant/Respondent whether by himself, his agents, servants, assigns, legal representatives or through anybody else whomsoever from entering into cultivating, building structures, wasting, encroaching, alienating or in any other manner interfering with the Plaintiffs user, occupation and possession of Plot No. GARBA/B/ISIOLO or ISL/117/98/397 measuring 6 acres situated within Isiolo County.***
4. ***THAT the costs of this Application be paid by the Defendant/Respondent.***

It is supported by the Affidavit of HUSSEIN NOOR HAJI and has the following grounds:

- a) ***THAT the Plaintiff's are registered Owners of the Suit Plot.***
- b) ***THAT the Defendant is an intruder interfering with the Plaintiff's quiet possession.***
- c) ***THAT the plaintiffs have the necessary legal documents of ownership***
- d) ***THAT the plaintiffs have developed the plot and have been in occupation since 1994 to date.***

This application came up for directions on 18.5.2014. Each of the parties claimed possession of the suit land. They could not agree on the nature of the status quo to be recorded by consent. In their submissions to the application both parties claim ownership. I have looked at their extensive submissions regarding whether or not the application meets the threshold principles set out in *Giela Versus Cassman Brown & Co. Ltd*, EA 1973 as regards grant of Injunctive orders. Several legal issues have been raised including the competence of the affidavit sworn by Hussein Noor Haji which purports to be sworn by himself and on behalf of his co-plaintiff without his written authority.

The submissions consist of diametrically opposed assertions. It is the plaintiffs' word against the defendant's word. Granting the orders sought will, in a way, have determined the ownership of the disputed land. It is mere semantics when we say that such orders are interlocutory. Such a determination at this stage will influence the final determination of the suit in one way or another. I am guided by the Court of Appeal which in *Mbuthia vs Jimba Credit Corporation* [1988] opined as follows:

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

As the parties have lived peacefully, their differing claims as to ownership notwithstanding, I issue the following orders:

- 1. Application is dismissed with costs to be in the cause***
- 2. Status quo obtaining as at 18.5.2015 be maintained until this suit is heard and determined.***
- 3. Parties do fully comply with order 11 CPR within 60 days of today which compliance should embrace Case Summary and issues for determination.***
- 4. Upon achievement of compliance parties to take a mutually convenient date for directions from the registry.***

Delivered in Open Court at Meru this 18th day of May, 2015 in the presence of:

Cc Lilian/Daniel

Baithambu for plaintiff

Kaume (Mr) for Defendant

P. M. NJOROGE

JUDGE