



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. E258 of 2021**

**CHICKOO INVESTMENTS LIMITED.....PLAINTIFF**

**VERSUS**

**ICD MARS YARD SERVICES LIMITED.....DEFENDANT**

**RULING**

1. Vide a notice of motion application dated 12.7.2021, the Applicant is seeking injunctive orders against the Defendant pending the hearing and determination of the suit. It is averred that the Applicant was allotted the suit plot No. "Unsurveyed Industrial Plot No. B. Nairobi" Measuring 2.2 Ha on 10.8.1989.
2. In the month of December 2020, Defendant invaded the same plot preventing the Applicant from developing the same.
3. In support of their case, the Applicant has availed a letter of allotment to buttress his averment that he owns the land.
4. The Respondent has opposed the application vide the replying affidavit of Joseph Muthumia Kirema who is a director of the Defendant dated 17.8.2021. It is averred that Defendant is the beneficial owner of the five-acre plot which is next to that of the Plaintiff. The Respondent identifies its land as Plot C subdivided into 9 portions registered as LR. 209/21805-209/21812 and 209/112187 (original No. 209/11289) registered in the year 1989.
5. The Respondent avers that it started leasing the premises as from January 2020 and also operates a parking yard and containers handling facility. The Respondent urges the court to dismiss the application.
6. In its further affidavit sworn by Job Okuna Oyugi, the Applicant contends that it is the *bonafide* owner of the Plot C which the Respondent alleges to be in occupation.
7. I have only seen submissions of the Defendant dated 23.11.2021 which I have duly considered.
8. The issue for determination is whether the orders of injunction sought by the Applicant are merited.
9. The conditions for granting the temporary injunction were stated in the **Giella v Cassman Brown & Co. Ltd 1973 EA** case that:  
  
*"An applicant must establish a prima facie case with a probability of success. Secondly, the interlocutory injunction will not be granted unless he Applicant might otherwise suffer irreparable injury which might not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.*
10. A glance at the plaint reveals that Applicants' claim is for the unsurveyed Plot No. B. measuring 2.2. Ha. This is repeated in the application for injunction. The allotment letter too captures Plot B measuring 2.2 Ha. However, in its further affidavit at paragraph 4, the Applicant states;

*" The Applicant's parcel of land is one of the four plots that were allocated to several allottees between 1988-1989. The Applicant is the lawful allottee of the suit parcel \_Plot B and the adjacent parcel – Plot C both measuring 5 acres.."*

11. In paragraph 5, thereof, the Applicant states:

*“In any event, the Applicant is also the bonafide owner of the Plot C that the Respondent alleges to be in occupation...”*

12. It is quite clear that the Applicants claim is not adding up since the total acreage for the plot B and C is 10 acres yet his claim as pleaded in the plaint is 2.2. ha which gives 5.43 acres contained in Plot B.

13. I am in agreement with the averments of the Defendant that the Applicant has not established a prima facie case. I need not interrogate the other principles. The application is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**IN THE PRESENCE OF:-**

**CHEMTAI HOLDING BRIEF FOR KIANO FOR THE DEFENDANT**

**OWINO FOR THE PLAINTIFF**

**COURT ASSISTANT: EDDDEL BARASA**