



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CIVIL SUIT NO 43 OF 2012

FELIX MWEBIA M'ATUGI1ST PLAINTIFF

DENNIS KINOTI ATUNGI.....2ND PLAINTIFF

VERSUS

CHIRA KARIUKI.....DEFENDANT

R U L I N G

This application is dated 17th April, 2012 and seeks Orders:-

1. ***THAT*** this application be certified urgent and be heard on priority basis and ex-parte in the first instance.
2. ***THAT*** the ex-parte orders of injunction issued on 20th March, 2012 be discharged and instead the Honourable Court be pleased to order that the status quo on land parcel No. ONTULILI/ONTULILI BLOCK 1 (KATHERI) 2300, 2301 2302 and 1443 be maintained, pending inter partes hearing of the application dated 15th March, 2012.
3. ***THAT*** pending the inter partes hearing of this application, an order of temporary injunction be issued restraining the 1st and 2nd Defendants in the Counter-Claim, their workers, agents servants, contractors or anybody else acting at their behest, direction, contract or employment from further pouring building materials, constructing or erecting any structures on land Parcel Nos. ONTULILI/ONTULILI BLOCK 1 (KATHERI) 1443, 2300, 2301 and 2302.
4. ***THAT*** pending the hearing and determination of this suit, an order of temporary injunction be issued restraining the 1st and 2nd Defendants in the Counter-Claim, their workers, agents, servants, contractors or anybody else acting at their behest, direction, contract, or employment from further pouring building materials, constructing or erecting any structures on land parcel Nos. ONTULILI/ONTULILI BLOCK 1(KATHERI) 1443, 2300, 2301 and 2302.
5. ***THAT*** this Honourable Court do issue further or better orders as will meet the interest of justice.
6. ***THAT*** costs be provided for.

It is supported by the Affidavit of CHIRA KARIUKI, the Defendant and has the following grounds:-

1. ***THAT the Respondents are wrongly occupying the Plaintiff's parcel No. ONTULILI/ONTULILI BLOCK 1(KATHERI) 1443.***
2. ***THAT the Respondents have always been aware of the wrong occupation and instead of moving to their correct positions on the ground, they have began constructing on the Plaintiff's /Applicant Land.***
3. ***THAT it is only fair and just that the problem of wrong occupation on the ground be rectified before the parties embark on developing the affected Parcels of land.***
4. ***THAT the application is merited.***

In their Submissions, the Plaintiffs say that they have a Prima Facie Case, would suffer irreparable loss if the orders they seek are not granted and that the balance of convenience tilts in their favour. They, thus say that they have satisfied all the ingredients necessary for the grant of an Interlocutory Injunction as enunciated in the case of **E.A. Industries Ltd Versus Trufoods Ltd (1972)1 EA 420 (CAN)** and which enunciation was reinforced by the case of **Giella Versus Cassman Brown and Co. Ltd (1973) EA 358 (CAK)**

The Defendant opposes the application. He argues that the security of land rights is Constitutionally guaranteed Under Article 60(1) (b) of the Constitution. He takes issue with the Land Registrar's Report and raises a number of issues which I decline to make any findings upon as they touch on matters which can only fairly be determined after the hearing of the main suit.

The Defendant Submits that the application's prayers were not merited as the Plaintiffs had miserably failed to meet the conditions for grant of interlocutory injunctions set out in **Giella Versus Cassman Brown (1973) E.A 358**. But the Defendant concedes as follows:

"My lord, it goes without saying that there is a serious dispute on ground possession of the subject parcels of land".

This is telling. The issues both parties are raising can only be determined after the suit is heard.

I need not reinvent the wheel. The Court of Appeal in the case of **Mbuthia Versus Jimba Credit Corporation, [1988] KLR 1** 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 had gone beyond his proper duties and made final findings of fact on disputed affidavits."

I refuse to be enticed to determine disputed issues at this Interlocutory stage. I note that the Honourable Justice J.A. Makau, Judge, on 19/04/2012 issued an order of status Quo to the effect: "Status Quo be maintained in that no Party should undertake any activities on the 4 parcels of land".

I do note that the order of "status Quo" has been extant since then.

Having carefully examined the parties respective pleadings and Submissions, I refuse to allow the application. I note that the order of status Quo has remained for over 2 years. I, issue the following orders:

1. ***Status Quo as obtained on 19/04/2012 do remain until this suit is heard and determined.***
2. ***Plaintiffs to fully comply with Order 11 CPR, within 30 days and the Defendant to do so within 30 days after receipt of the Plaintiffs' compliance documents.***

3. Upon achievement or upon expiry of 60 days of today, whichever is earlier, the Plaintiffs to set down the case for hearing within 45 days.

It is so ordered.

Delivered in Open Court at Meru this 22nd July, 2015 in the presence of:-

Cc.: Daniel

Thangicia for Defendant/Respondent

Mutegi for Plaintiffs/Applicants

P. M. NJOROGE

JUDGE