



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT AND LAND CASE NO.193 OF 2013

CHRISTINE CAREN NYANGAGA.....PLAINTIFF

VERSUS

MESHACK ODUOR NDOLO..... DEFENDANT

RULING

1. The plaintiff – **CHRISTINE CAREN NYANGAGA** – filed her suit here on 19/7/2013. The suit is against the defendant – **MESHACK ODUOR NDOLO**. Together with the suit was also filed an application for, inter alia, temporary restraining orders. That application is the subject of this ruling.
2. The application has 5 prayers but prayers 1 and 2 are spent, having been dealt with earlier at exparte stage. The focus therefore is on prayers 3, 4, and 5, which are formulated thus:

Prayer 3: That pending hearing and determination of this suit, there be an order of permanent injunction restraining the defendant herein either by himself or through his agents, employees, workers and/or any other person deriving authority from him from entering, wasting, damaging, alienating, claiming, sub-dividing, allocating, disposing or in any other manner interfering with the plaintiff/Applicants possession, ownership and occupation of Land Parcel **PLOT No.210 Maseno Township**, measuring approximately 0.0465 Ha.

Prayer 4: The O.C.S, Maseno police station do assist in compliance with this order.

Payer 5: Costs of the application be provided for.

3. The plaintiff stated that she was allocated Land Parcel **No.210, MASENO TOWNSHIP**, which is “suit Land” hereafter, vide a letter of offer dated 18/5/2012. Since then, she has been paying rates punctually. She was allocated the suit land after it was repossessed from the defendant who had failed to carry out the required developments within the given period.
4. The defendant is now said to have invaded the suit land. The plaintiff said she will suffer irreparable loss. She asked that the defendant therefore be enjoined as prayed in her application.
5. The defendant opposed the application vide a replying affidavit sworn on 25/9/2013. In the affidavit he stated that he is the registered proprietor of the suit Land. He asserted that he was allocated the suit property by Kisumu County Council on 1/4/1991.
6. The defendant further said that he has been enjoying peaceful possession of the suit land until 1/7/2013 when he received communication from the County government of Kisumu informing

him that there was a dispute over the suit property and asking that any developments on it be suspended until the dispute was resolved.

7. The defendant denied any knowledge of cancellation of his title and averred that any such cancellation without a court order is null and void. He said too that reallocation of his property without his knowledge was an affront to his right to own property. He asked the court to dismiss the application.
8. The plaintiff filed submission; the defendant did not. The plaintiff's submissions reiterated the contents of the application. The plaintiff said she acquired the suit land innocently. Her counsel submitted that the plaintiff has met the conditions necessary to grant a restraining order as spelt out in the decided case of **GIELLA VS CASSMAN BROWN & Co LTD (1973) E.A.358**. The requirements were stated to be establishment of a prima facie case with a probability of success; possibility of suffering irreparable loss not compensable in damages; and in case of doubt as to these two, the court is enjoined to decide the matter on a balance of convenience.
9. I note that the defendant didn't file submissions. So, while the plaintiff articulated his position and advanced it in the submissions, the defendant's side obviously lacks the advantage of submissions.
10. The plaintiff was also able to show that as things stand, he is the recognised legal owner of the suit property. Where such is the case, it is proper to make a finding that a prima facie case is established. And I do make such finding in this case.
11. There is also need to preserve the suit property. As held in **Oteino V Ougo & Another (No.2) (1987) KLR 400**, the established rule is that an injunction is granted to preserve the subject matter pending hearing and determination of the action. There are competing claims of ownership here and there is need to preserve the suit land. A restraining order is therefore necessary.
12. The upshot, after all is considered, is that the plaintiff's application has merit and a restraining order in terms of prayer 3 is hereby granted. Prayer 4, which is enlisting the support of the area O.C.S in enforcing the order is not granted. Contempt of court proceedings is the way to go in case of violation of any order given. Costs of the application will be in the cause.

HON. A. K. KANIARU

ENVIRONMENT & LAND – JUDGE

20/8/2015