



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. CASE NO. 466 OF 2014**

**JEDIDA ONDISO AKANDA.....PLAINTIFF**

**VERSUS**

**BENSON NZAMBU.....1<sup>ST</sup> DEFENDANT**

**GEORGE OGODO.....2<sup>ND</sup> DEFENDANT**

**BENSON OCHOKA).....3<sup>RD</sup> DEFENDANT**

(SUED IN HIS PERSONAL CAPACITY AND AS

CHAIRMAN OF HURLINGHUM SQUATTERS DEVELOPMENT

**RULING**

Coming up before me for determination is the Notice of Motion dated 15<sup>th</sup> April 2014 in which the Plaintiff/Applicant is seeking for orders of injunction restraining the Defendants from trespassing, alienating, constructing or continuing to construct any structures on Plot No. 0182 Choka area in Ruai (hereinafter referred to as the “suit property”) pending the hearing and determination of this Application and suit. The Plaintiff/Applicant also seeks for costs of this Application to be provided for.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the Plaintiff, Jedida Ondiso Akanda, sworn on 15<sup>th</sup> April 2014 in which she avers that by a written agreement for sale dated 10<sup>th</sup> May 2013 made between herself and the 2<sup>nd</sup> Defendant, she agreed to purchase and the 2<sup>nd</sup> Defendant agreed to sell and transfer to her the suit property at an agreed total consideration of Kshs. 180,000/- which she paid in full. She produced a copy of the sale agreement. She further stated that at that time, the 2<sup>nd</sup> Defendant represented himself to her as the beneficial owner of the suit property being a member of Hurlingham Squatters Development. She further stated that the 3<sup>rd</sup> Defendant being the Chairman of the Hurlingham Squatters Development, attested to the execution of that sale agreement between herself and the 2<sup>nd</sup> Defendant. She said further that she was issued with a Certificate for the suit property. She produced a copy of the Certificate. She further averred that upon making full payment for the suit property to the 2<sup>nd</sup> Defendant, she took possession of the suit property and commenced constructing a perimeter wall in preparation for construction of a house. She stated further that however, on 23<sup>rd</sup> February 2014, when she visited the suit property, the 2<sup>nd</sup> and 3<sup>rd</sup>

Defendants stopped her from entering the suit property claiming that it now belonged to the 1<sup>st</sup> Defendant. She further averred that on 28<sup>th</sup> February 2014, the Defendants entered the suit property and demolished her perimeter wall and started construction of a new perimeter wall around the suit property. She further stated that as a result of those actions by the Defendants, she has been deprived of her right to quiet possession and enjoyment of the suit property.

The Application is not opposed. Despite being duly served with all the pleadings in this suit, the Defendants filed no response.

The Plaintiff/Applicant filed her written submissions which have been read and taken into consideration in this ruling.

In deciding whether or not to grant the interlocutory injunction, I wish to refer to and rely on the precedent set out in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

**“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”**

Has the Plaintiff/Applicant made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

**“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”**

Has the Plaintiff/Applicant established a prima facie case? This heavily depends on whether the Plaintiff/Applicant has been able to convince this court that she has sufficient interest in the suit property that this court ought to protect through issuing an interlocutory injunction. In support of her assertion of being the owner of the suit property, the Plaintiff/Applicant produced to this court a copy of the sale agreement bearing a stamp dated 10<sup>th</sup> May 2013 entered into between herself and the 2<sup>nd</sup> Defendant. She also produced a Certificate No. 0061 bearing a stamp dated 11<sup>th</sup> May 2013 issued by the Hurlingham Squatters Development in respect of the suit property. In the absence of any evidence on the part of the Defendants controverting the Plaintiff’s assertions, I find that she has established a prima facie case with high chances of success at the main trial.

Does an award of damages suffice to the Plaintiff/Applicant? Land is unique and no one parcel can be equated in value to another. The value of the suit property can be ascertained. However, it would not be right to say that the Plaintiff can be compensated in damages. I hold the view that damages are not always a suitable remedy where the Plaintiff has established a clear legal right or breach. See **JM GICHANGA versus CO-OPERATIVE BANK OF KENYA LTD (2005) eKLR**. This position finds further support in the case of **Sharok Kher Mohamed Ali & Another versus Southern Credit Banking Corporation Ltd (2008) eKLR** where Warsame, J. stated as follows:

**“I am satisfied a party deprived of his property through an illegal process would suffer irreparable loss and/or damage. In any case a party entitled to a legal right cannot be made to take damages in lieu of his right. In essence, the damage and/or loss that would be suffered by the plaintiffs would be significant if an injunction is not granted. My position is that a party in contravention of the law cannot be rewarded for his contravention.”**

Being not in doubt, I see no reason to determine in whose favour the balance of convenience tilts.

Arising from the foregoing, I hereby allow the Application with costs to the Plaintiff.

**SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY 2014.**

**MARY M. GITUMBI**

**JUDGE**