



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**

**E & L CASE NO. 68 OF 2013**

FRANCIS MARETE.....1ST PLAINTIFF

VS

PHILIP NJERU MWATHI.....1ST DEFENDANT.

JOSPHAT KITHAKA KAMWARA.....2ND DEFENDANT

THARAKA DISTRICT LAND ADJUDICATION OFFICER.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

**RULING**

This application by the 1st defendant is dated 17th May, 2013 and seeks orders;

- 1. That this application be certified as urgent and be heard ex-parte in the first instance.***
- 2. That pending the hearing of this application inter-partes this honorable court be pleased to issue temporary orders of injunction restraining the plaintiff, their agents, servants, employees and whomsoever acting on their behalf or instructions from entering, cultivating, erecting any structures, continuing to trespass, grazing, using, selling, or in any manner whatsoever from dealing with Land Reference No. 269 Chiakariga Adjudication Section.***
- 3. That pending the hearing and determination of this suit, this honorable court be pleased to issue temporary orders of injunction restraining the plaintiff, their agents, servants, employees and whomsoever acting on their behalf or instructions from entering, cultivating, erecting any structures, continuing to trespass, grazing, using, selling, or in any manner whatsoever from dealing with Land Reference No. 269 Chiakariga Adjudication Section.***
- 4. That the costs of this application be provided for.***

It is predicated upon the affidavit of Philip Njeru Mwathi the 1st defendant/applicant and the following grounds;

- (a) That the 1st defendant is the registered proprietor of Land parcel No. 269 Chiakariga Adjudication Section.***
- (b) That there is a pending suit herein yet the plaintiff is trespassing on his portion of land parcel No. 269 Chiakariga Adjudication Section maliciously destroying crops and grazing his livestock on the said portion of land.***

**(c) That the plaintiff is illegally grazing, destroying, crops, burning, charcoal, destroying property, trespassing and occupying the 1st defendant/applicant's land without any lawful cause.**

**(d) That the applicant's land may be wrongfully alienated by the plaintiff if he is not restrained from dealing with the suit land which he had already trespassed and started cultivating.**

**(e) That the applicant stand to suffer irreparable loss and damage.**

Prayer 1 is spent and prayer 2 was granted on 24/5/2013.

On 12/8/2013, the parties by consent, obtained an order that status quo be maintained to the effect that the plaintiff and the 1st defendant do stay in the portion they were occupying. On the same day, by consent, the parties elected to have this application heard by way of written submissions.

The 1st defendant in his submissions says that he is the registered owner of the suit Land parcel no 269 CHIAKARIGA ADJUDICATION SECTION. He notes that the plaintiff in his pleadings admits this fact but says that the land 1st defendant was fraudulently registered as the owner of the land. He also says that the plaintiff has built his house on land parcel no 1216 CHIAKARIGA ADJUDICATION SECTION and not on Land parcel No. 269 CHIAKARIGA ADJUDICATION SECTION as alleged. He states that the plaintiff is trespassing on the 1st defendant's land, and inter-alia, cutting trees and grazing his livestock thereon.

The defendant submits that he has satisfied the condition for grant of an interlocutory injunction as enunciated by the case of ***Giela Vers Cassman Brown (1973) E.A 358***. he submits that he has shown a prima facie case and that the balance of convenience tilts in his favour as the registered owner of the suit land. He has submitted that in the absence of fraud, his rights can not be defeated by any alleged equitable rights by the plaintiff.

The plaintiff/respondent has opposed the application. He wants the court to know that he is the one who instituted this suit and not the defendant. He states that the defendant acquired the suit land despite his occupation and use of the land since 1994, a period of over 19 years. He says that the applicant has never stepped his foot on the suit land and it is only after the plaintiff instituted this suit that the applicant has awakened to what he claims to be his rights.

The plaintiff submits that the defendant is not at risk of suffering irreparable damage as he has all along not been in occupation and use of the suit land. He says that the claims by the defendant that he has a house on the suit land can not be established at this interlocutory stage. In a nutshell, he submits that the status quo obtaining should not be disturbed and further says that the defendant/applicant should wait until issues in the main suit are canvassed and determined rather than seek entry into the suit land from the back door, after 19 years of his absence.

The parties have proffered assertions and counter assertions. I need not reinvent the wheel. The Court of Appeal in the case of ***Mbuthia Versus Jimba Credit Corporation (1988) KLR1*** opined;

***“ 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 proposition. The lower court judge in this case had gone beyond his proper duties and made final findings of facts on disputed affidavits”***

I am unable at this interlocutory stage to establish the veracity of the respective parties assertions. I do not wish to decide on disputed facts whose integrity and veracity can only be established after the hearing of the main suit.

I, therefore, dismiss the application.

I issue the following orders;

***1. Status Quo as was agreed by the parties by consent on 12/8/2013, be maintained to the effect that the plaintiff and the 1st defendant do stay in the portions of land they have been occupying.***

***2. Costs shall be in the cause.***

It is so ordered.

**Delivered in Open Court at Meru this 30th day of October, 2014 in the presence of;**

Cc. Daniel/Lilian

Ngunjiri holding brief for applicant/1st defendant.

Other parties not in court.

**P.M NJOROGE**

**JUDGE**