



REPUBLIC OF KENYA

High Court at Eldoret

Environmental & Land Case 962 of 2012

FRANCIS KISERA.....1ST PLAINTIFF

PAZILIZA JEMUTAI KANDIE.....2ND PLAINTIFF

=VS=

BARNABAS KIPNG'ETUNY TIEMOI.....DEFENDANT

RULING

**(Application for injunction; principles to be considered in an application for injunction; applicant owner of suit land;**

**applicant alleging that defendant is a trespasser; application not opposed by defendant; injunction issued.)**

The application before me is the Motion dated 5 September 2012. It is an application filed by the two plaintiffs seeking orders to restrain the defendant by way of injunction from interfering with the land parcel Baringo/Kapropita/168 (the suit land) pending the hearing and determination of this suit. The application is supported by the replying affidavit of the 1<sup>st</sup> plaintiff. The defendant despite being served with the application for injunction has failed to respond to the same. Indeed the defendant has not filed any documents in respect of this suit and has not even entered appearance to this suit despite being duly served with summons.

This being an application for injunction, I will stand guided by the principles set out in the case of **Giella vs Cassman Brown (1973) EA 358**. I need to be satisfied that the plaintiff has set out a *prima facie* case with a probability of success, be alive to the principle that an injunction will not normally be granted if damages will be sufficient, and finally if in doubt, decide the case on a balance of convenience.

In the circumstances of this case, the defendant has not filed any documents and therefore the only material I have before me are the pleadings of the plaintiffs. In their plaint, the plaintiffs have pleaded that they are the registered owners of the suit land Baringo/Kapropita/168. They have displayed the Certificate of Title in their supporting affidavit. It is further pleaded in the plaint and deponed in the supporting affidavit that the defendant in the month of August 2012 trespassed into the suit land and erected a structure claiming that the land was his. It is further deponed that the plaintiffs have tried to stop the defendant in vain hence this application for injunction. In their plaint, the plaintiffs have inter alia sought prayers of permanent injunction to restrain the defendant from further interference with the suit land.

The application before me is unopposed. The plaintiffs have demonstrated that they are the owners of the suit land. This has not been disputed by the defendant as the defendant has not filed any response to this application. I am satisfied that as owners the plaintiffs have a *prima facie* case of trespass against the defendant. There is no doubt that they stand to suffer irreparable loss if the defendant is not stopped from further interference with the suit land.

I therefore allow this application. The defendant is hereby restrained alongside his servants/agents from working on, constructing upon, ploughing or in any other way interfering with the suit land Baringo/Kapropita/168 pending the hearing and determination of this suit. Costs of this application shall be costs in the cause.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 29<sup>TH</sup> DAY OF JANUARY 2013.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

**Ruling Delivered in the presence of Mr. A.T Kiboi of M/s Chemitei & Co Advocates for the plaintiff/applicant.**

**No appearance on the part of the defendant/respondent.**