



REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 91 of 2012

JACKSON K. TUITOEK.....PLAINTIFF/APPLICANT

VERSUS

STEPHEN TANGUS SELIENYI.....1ST DEFENDANT/RESPONDENT

MICHAEL CHEBII.....2ND DEFENDANT/RESPONDENT

VINCENT MOIBEN.....3RD DEFENDANT/RESPONDENT

RULING

By a plaint dated 19th March, 2012, the applicant Jackson K. Tuitoek, instituted this suit against the respondents, Stephen Tangus, Michael Chebii and Vincent Moiben seeking a perpetual injunction restraining the respondents either acting by themselves, their agents, servants or any other manner whatsoever from interfering with the parcel of land known as NAKURU/NGONGONGERI/1285 (the suit property).

Simutaneneously with the plaint, the applicant filed the notice of motion dated 19th March, 2012 seeking, the above orders, on a temporary basis pending the hearing and determination of the suit.

The application is supported by the affidavit of the applicant and is premised on the ground that the respondents have without any colour of right entered the applicant's parcel of land (the suit property) and started cultivating thereon.

Despite the fact that the application had been fixed for hearing in the presence of all parties, when it was called for hearing on 17th July, 2012, there was no appearance for the respondents. It was, therefore, heard *ex parte*.

Notwithstanding the fact that the application is undefended the burden is on the applicant to prove his case by showing that it meets the conditions for granting an interlocutory injunction as set out in **Giella Cassman Brown & Co. Ltd. (1973) EA 358**, namely that he has a *prima facie* case with a probability of success, that unless an injunction is granted, he might otherwise suffer injury which cannot adequately be compensated by an award of damages; and that the balance of convenience tilts in his favour.

From the affidavit sworn by the applicant and the annexure thereto (title deed) *prima facie* the applicant is the registered owner of the suit property.

No evidence whatsoever has been led to show that the ownership of the applicant is subject to any

encumbrances or overriding interests contemplated under **Sections 28 and 30** of the repealed **Registered Land Act**.

In his supporting affidavit the applicant has averred that the respondents have fenced off the suit property and prevented him from having any dealings with the same. These averments have not been controverted by the respondents and given that, *prima facie*, he is the owner of the suit property, I am satisfied that unless an injunction is issued to restrain the respondents from proceeding with their illegal alienation of the suit property, the applicant may be greatly prejudiced. I am also satisfied that the balance of convenience tilts in his favour.

The upshot of the foregoing is that the application has merit and is allowed as prayed.

Dated and Signed at Nakuru this 18th day of January, 2013.

**W. OUKO
JUDGE**

Dated, Signed and Delivered at Nakuru this 29th day of January, 2013 by Hon. Justice M. J. Anyara Emukule.

JUDGE