



**REPUBLIC OF KENYA**

**High Court at Kitale**

**Environmental & Land Case 36 of 2013**

**PETER M. N. SIMATWA..... PLAINTIFF**

**VERSUS**

**GATATHA FARMERS CO. LTD .....} 1ST DEFENDANT**

**KOITET TEA (1997) ESTATE LTD.....} 2ND DEFENDANT**

**R U L I N G**

The Applicant Peter M. N. Simatwa brought a Notice of Motion dated 26/03/2012 seeking an injunction restraining the Respondents from evicting him or any of his family members from 38 acres out of land Parcel No. 6137 Trans-Nzoia. The Applicant contends that his great grandfather, grandfather and father lived on part of the suit land and were buried on it that his late father allocated him 38 acres of the suit land and that recently the Respondents have been laying claim over the land and have prevented him from ploughing and planting alleging variously that he is entitled to 3 hectares, 25 acres and most recently, 3 acres. He states that the Respondents have recently compensated some of his family members but that he was not part of these arrangements. He therefore prays for an injunction as he is apprehensive that the Respondents might evict him using the Provincial Administration.

The application was opposed by Peter Kipngeno Kotut vide Replying Affidavit sworn on 16th April, 2013. The deponent is a Director for the 2nd Respondent who states that the suit land was purchased from the 1st Respondent on or about 05/08/2011. That at the time of purchase, they were aware that some families including the family of the Applicant were on the land. As the 2nd Respondent wanted to maximize the use of its land, it initiated negotiations with the families whereby an agreement was reached that they be compensated with Ksh. 5 million so that they can move out of the land. Those who were compensated moved out of the land but the Applicant opted to bring this application. The 2nd Respondent contends that the action was not in any way recognizing the claims of those who were on the land but was only acting on humanitarian grounds. The 2nd Respondents contends that it is aware that the family of the Applicants were tenants on LR 5711/3 by virtue of their father's life interest and that since the family has been given compensation on humanitarian grounds, the Applicant has no claim over any of the 2nd Defendant's parcels of land.

I have carefully gone through the Applicant's application as well as the Replying Affidavit of the 2nd Respondents. The Applicant is seeking a temporary injunction restraining the Respondents from evicting him. The principle for grant of a temporary injunction were well set out in the case of **Giella Vs Cassman Brown Co. Ltd 1973 EA 358**. Firstly, an Applicant must show a prima facie case with a probability of success. Secondly, an injunction will not normally be granted unless the Applicant might otherwise suffered irreparable injury. Thirdly, when the Court is in doubt, it will decide the application on the balance of convenience.

In the present case, the Applicant is seeking an injunction based on his claim for adverse possession. His claim is yet to be ascertained. He has not demonstrated in any way that he has a claim with probability of success. He claims to have been occupying 38 acres out of LR No. 6137. He does not say from what period he has been occupying the said 38 acres. He merely claims that his great grandfather, grandfather and father were buried on the land. He does not say or give the acreage of the said land part of which he lays claim by way of adverse possession. He has not annexed a certified extract of the title to his claim as

required under the provisions of the Civil Procedure Rules. It is therefore difficult for the Court to appreciate whether he has a valid claim or not. He merely states that he fears that the Respondents may evict him using the Provincial Administration. The documents he has annexed to his supporting affidavit touch on a different parcel of land from the one which he is claiming. The documents he has annexed relate to Land Parcel No. 5711. The 2nd Respondent contends that the Simatwa family of which the Applicant belongs were given some 5 million shillings and agreed to move out of the land they were occupying. Though the settlement agreement does not include the Applicant herein, the fact remains that he is one of the Simatwa families. If he had any other claim apart from the rest of the family of Simatwa, he was bound to show that he had that claim. As his applications stands, it cannot succeed. A Court of law cannot issue injunction orders outside the principles given in the Giella Cassman case cited hereinabove. The Applicant's fear of eviction is unfounded and he has failed to demonstrate that he has a case with probability of success. The balance of convenience tilts against grant of injunction sought. The upshot of this is that the Applicant's application fails and the same is hereby dismissed with costs to the 2nd Respondent.

It is so ordered.

**Dated, signed and delivered in Open Court on this 30th day of April, 2013.**

**E. OBAGA**

**JUDGE**

In the presence of Mrs. Wanyama for Applicant and Mr. Odoyo for 2nd Respondent. Court Clerk: Joan.

**E. OBAGA**

**JUDGE**

**10/04/2013**