



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ELC CASE NO. 117 OF 2012

BERTHA KARAMBU KIRIMI.....PLAINTIFF

VERSUS

EVANS KITHINJI.....DEFENDANT

R U L I N G

This application is dated 8th October, 2012 and seeks orders:

1. **THAT** the application be certified extremely urgent and it be heard ex-parte in the first instance.
2. **THAT** pending inter-partes hearing of the application, a temporary injunction be issued restraining the defendant/respondent, his family members, representatives, assigns, employees, servants, agents and/or anybody else claiming or acting for, through or on his behalf, from entering into, trespassing onto, cultivating, utilizing, effecting any form of developments on and/or whatsoever interfering with the plaintiff's/applicant's peaceful quiet, uninterrupted and undisturbed actual possession, user, cultivation and enjoyment of L.R. No. KIRIMARA/KITHITHINA BLOCK 1/129 measuring about 2.12 hectares.
3. **THAT** pending hearing and determination of the suit or until further orders of the Court, a temporary injunction be issued restraining the defendant/respondent, his family members, representatives, assigns, employees, servants, agents and/or anybody else claiming or acting for, through or on his behalf, from entering into, trespassing onto, cultivating, utilizing, effecting any form of development on and/whatsoever interfering with the plaintiff's/applicant's peaceful, quiet, uninterrupted and undisturbed actual possession, user, cultivation and enjoyment of L. R. No. KIRIMARA/KITHITHINA BLOCK1/129 measuring about 2.12 hectares.
4. **THAT** pending hearing and determination of the suit or until further orders of the Court, the caution lodged by the defendant/respondent and registered against L. R. No. KIRIMARA/KITHITHINA BLOCK 1/129 on 09.11.2011 be removed and lifted.
5. **THAT** costs of the application be provided for.

This application was brought to Court by way of a certificate of urgency on 10th October, 2012 and Interim Orders in terms of prayer 1 and 2 were granted by the Hon. Lady Justice J. Lesiit, Judge.

The application was heard Inter Partes on 30.5.2013. Counsel for the plaintiff stated that he was relying on the various affidavits sworn by his client, other annexures, and on the list of authorities and statutes he had filed.

He claimed that the plaintiff had bought the suit land and the witness statements of a son and a daughter supported her. He also claimed that the defendant had not filed defence in this suit. I find this claim not to be correct as there is a defence in the Court file filed on 20th November, 2012.

Counsel for the plaintiff elaborated on how the plaintiff had satisfied all the requirements for the grant of an injunction as enunciated in the classic case of **Giella V. Cassman Brown & Co Ltd [1973] EA 358**. He also produced other authorities.

Concerning the lifting of the caution registered against the land by the defendant, he explained that as the registered owner of the suit land, the applicant had absolute right of ownership. He supported the case for removal of the caution by citing apposite Constitutional and Statutory provisions.

The defendant claimed that the suit land was bought by his father who died in 1985 and it was registered in the name of the plaintiff/applicant following the agreement of the family, for her to hold it on their behalf.

I am cognizant that this is an interlocutory application. After examining the affidavits of the parties, I note that there are many conflicting claims which can only be fully ventilated at the hearing of the main suit. At this stage, I only need to look at the relative weight of the arguments of the parties. Care must be taken so that I do not decide on matters which will be determined at the conclusion of the suit.

In the circumstances, I find that the plaintiff has satisfied the Court that she deserves the grant of a temporary injunction pending the hearing and determination of the suit. Regarding the removal and lifting of the caution lodged by the defendant against L. R. No. KIRIMARA/KITHITHINA BLOCK 1/129, I find it necessary that the conflicting claims regarding whether the suit land is family land or not be canvassed at the hearing of the suit.

I, therefore, order:

1. **THAT prayer 3 be granted.**
2. **THAT prayer 4 is denied.**
3. **THAT costs be in the cause.**

Delivered at Meru in Open Court this 27th day of June, 2013 in the presence of:

Cc. Mwonjaru/Daniel

Miss Waithaka for plaintiff/applicant

Evans Kithinji defendant in person

P. M. NJOROGE

JUDGE