



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL SUIT NO. 29 OF 2010

THARA M'MWORIA.....PLAINTIFF

VERSUS

M'MPARATA M'IKIRIMA KIRURI.....DEFENDANT

RULING

The application herein was filed in Court by way of a Notice of Motion and is dated 12th day of January, 2013. It seeks for orders:

1. **THAT this application be certified urgent and same be heard ex-parte in the 1st instance.**
2. **THAT pending the hearing of this application inter-partes this Honourable Court be pleased to issue a temporary order of injunction restraining the defendant, his agents or/and assigns from sub-dividing and/or transferring L. R. No. NJIA/KIEGO/48 or any sub-division therefrom.**
3. **THAT pending the hearing and determination of this suit this Honourable Court be pleased to issue an order of injunction restraining the defendant by himself, agents, assigns or anybody else from sub-dividing or/and transferring L. R. No. NJIA/KIEGOI/48 or any sub-divisions therefrom.**
4. **THAT this Honourable Court be pleased to issue an order of inhibition restraining any dealings whatsoever on Land Reference No. NJIA/KIEGOI/48 or/and any sub-divisions therefrom until this suit is heard and determined.**
5. **THAT the costs of this application be provided for.**

The matter was heard ex- parte on 15.1.2013 and prayer 4 in the nature of an inhibition was granted.

During the Inter-Partes hearing on 29.4.2013 counsel for the applicant argued that prayers 2, 3 and 4 were deserved as the defendant held the suit land in trust for the applicant and other parties. He felt that the applicant had a prima facie case as the plaintiff was likely to suffer loss if the orders were not granted. He also indicated that he was relying on the principles of the **GIELA** case without elaborating on how the said principles suited his case.

Counsel for the defendant opposed the application, terming it as an abuse of the Court process and an afterthought as the applicant/plaintiff had filed the suit herein in 2010 whereas the respondent/defendant

was registered as owner of the suit land in 1983. The suit was thus filed 27 years later. He stated that it was not in dispute that the defendant and the plaintiff were cousins. He stated that the defendant had in his replying affidavit, which he entirely relied upon, showed that the respondent owns 2 parcels of land. As both the plaintiff and the defendant had gathered their respective parcels of land during consolidation, neither could claim that the other was a trustee.

The counsel also pointed that an earlier decision by the land Tribunal had been quashed by the High Court. He contended that the plaintiff had not claimed any interest be it overriding or otherwise recognized by the law. He pointed out the occupation for other 30 years of suit land by the defendant was not discounted at all. For this reason, the guiding principles as contained in the case of **GIELLA Vs Cassman Brown and Co. Ltd [1973] EA 358** would tilt the balance of convenience in favour of the defendant, he averred.

I have considered the submissions of the parties I adopt the Court of Appeal's statement in Mbutia Vs Jimba Credit Finance Corporation and Another [1988] KLR that:

“The Correct approach in dealing with an application for an interlocutory injunction is not to decide the issue of facts but rather to weight up the relevant strength of each side's propositions”.

I think this approach should not be confined to interlocutory injunctions only. In my view the approach should embrace other interlocutory orders, including inhibitions.

I find that the applicant has failed to demonstrate why he should be granted the orders of Injunction and Inhibition he has sought in this application. In the circumstances, his application is dismissed with costs to the defendant. Consequently, the Interlocutory order of of Injunction granted herein on 12th January, 2013, is as a matter of course, vacated.

WRITTEN AND SIGNED AT MERU THIS 12TH DAY OF JUNE, 2013.

P.M. NJORGE

JUDGE