

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 242 OF 2013

KENNEDY ORINA MANGERA.....PLAINTIFF

VERSUS

PETER KIARIE1ST DEFENDANT

EMBAKASI RANCHING COMPANY LIMITED2ND DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 19/12/12 in which the Plaintiff/Applicant is seeking an interlocutory injunction restraining the Defendants from trespassing and constructing on land parcels known as Plot Nos. G113 and G113B (hereinafter referred to as the "Suit Property") pending the hearing and determination of this application and the main suit. He also requests for costs.

The application is based upon the grounds appearing on the face thereof and the Supporting Affidavit of the Plaintiff/Applicant in which he swore that he bought the Suit Property from one George M. Kinyuru who was the original allottee thereof from Embakasi Ranching Company Limited. He further swore that George M. Kinyuru transferred to him the Suit Property and he was issued a Share Certificate No. 1339 by the 2nd Defendant which proves his proprietorship over the Suit Property. He further stated that the 1st Defendant has encroached and trespassed into the Suit Property and has commenced construction thereon causing him apprehension that the Suit Property will be wasted, alienated or transferred.

The application is uncontested. Though both Defendants were duly served, none of them filed their response to this application.

The Principles to be followed when considering whether or not to grant an interlocutory injunction were very well enunciated in the celebrated case of *Giella v. Cassman Brown [1973] EA 358* as follows:

1. ***That Applicant must show that he has a prima facie case which has chances of success at the main suit.***
2. ***That if not granted the orders, the applicant is bound to suffer irreparable injury which cannot be compensated with damages.***
3. ***If the court is in doubt, it will decide the application on the balance of convenience.***

To establish a *prima facie* case, the Applicant must establish that he has a genuine and arguable case. In the instant case, the Applicant has produced his documents of ownership which have shown on a *prima facie* basis that the Suit Property was allocated to one George M. Kinyuru by the 2nd Defendant who in turn transferred the same to the Applicant. This court finds therefore that the Applicant has established a *prima facie* case with a probability of success at the main trial. As to whether he will suffer irreparable injury not capable of being compensated with an award of damages, I find in his favour owing to the fact that land is unique and no one parcel of land can be properly equated with another in value. On a balance of convenience, I rule in favour of the Applicant who had been in possession of the Suit Property from 1998 upto the year 2011 when the 1st Respondent is reported to have encroached thereon.

In light of the foregoing, I hereby allow the application with costs to the Applicant.

SIGNED AND DELIVERED AT NAIROBI THIS 26TH

DAY OF JULY 2013.

MARY M. GITUMBI

JUDGE