



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI

ELC SUIT NO. 424 OF 2012

DAYKIO PLANTATIONS LIMITED.....PLAINTIFF

VERSUS

THOMAS OGINGA ONYANGO..... 1ST DEFENDANT

MARY MWANGI.....2ND DEFENDANT

ELIZABETH NJERI.....3RD DEFENDANT

MAINA KINYUA & 16 OTHERS.....4TH DEFENDANT

RULING

The Plaintiff has filed a Notice of Motion dated 19th July 2012 seeking temporary injunction orders from this court against the Defendants to restrain them from entering, excavating, stone mining, damaging and/or in any way dealing with Land Reference Number 8442 located at Mwiki Njiru in the City of Nairobi (hereinafter “the suit property”), pending the hearing and determination of this case.

The Plaintiff in a supporting affidavit sworn on 19th July 2012 by Patricia Sheth, its Manager, states that it is the registered owner of the suit property. Further, that the Defendants have entered the said property and started carrying on excavations and stone mining thereon, thus damaging the property. The deponent attached a copy of the Plaintiff’s title to the suit property, and photographs showing the excavations on the suit property.

The Defendants opposed the Notice of Motion, and in a replying affidavit sworn on 27th July 2012 by the 1st Defendant contended that they were undertaking the mining on a different parcel of land namely L.R Nairobi/Njiru/280 as licencees, and that the said property was public land. Further, that they had filed a case in Milimani Commercial Courts, being CMCC 3583 of 2012, and obtained orders restraining the directors of the Plaintiff from interfering with the Defendants’ activities on the said land.

These allegations were denied by the Plaintiff in a supplementary affidavit sworn by its Manager, Patricia Sheth, on 9th August 2012. She reiterated that the land on which the Defendants were undertaking mining activities belonged to the Plaintiff and was not public land. Further, that the Plaintiff had not given any person a licence to mine or extract stones from the land, and that its core business was buying land, subdividing it and selling portions to interested buyers. She also stated that the Defendants did not sue the registered owner of the suit property in CMCC 3583 of 2012, nor were its directors served with the pleadings in the said suit. It was also averred by the deponent that the Defendants had not availed a copy of the title to L.R Nairobi/Njiru/280.

The parties were directed to file written submissions, and the Plaintiff's counsel filed submissions dated 21st May 2013. He argued that the Plaintiff's had met the requirements for the grant of a temporary injunction as laid down in **Giella vs Cassman Brown & Co. Ltd (1973) E.A 358** and **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others (2003) KLR 125**, as it had shown that it is the registered owner of the suit property. Further that the Defendants are trespassers on its land.

The Defendants did not file any submissions despite having been indulged by the Court, and the hearing of the Plaintiff's Notice of Motion adjourned three times to give them time to do so.

I have carefully read and considered the pleadings and arguments made by the parties herein. The issue for determination is whether the Plaintiff has met the requirements stated in **Giella vs Cassman Brown & Co Ltd, (1973) EA 358** as to the grant of a temporary injunction. These are that the applicant must establish a *prima facie* case, and that he or she would suffer irreparable loss which may not be compensated by an award of damages. If the Court finds that the two requirements are not satisfied, it may decide an application on the balance of convenience.

My finding is that the Plaintiff has established a *prima facie* case as it has provided evidence of title to the suit property, which was transferred to it on 10th July 2007. The Defendants did not bring any evidence of the title of, or any licence from the registered owner of the property they claim they were mining on, namely L.R Nairobi/Njiru/280. I also note that the orders given in CMCC 3583 of 2012 are in relation to L.R Nairobi/Njiru/280 and not the suit property.

In addition, it is also my finding that given the nature of the activities being undertaken by the Defendants on the suit property, the Plaintiff will suffer irreparable harm if an injunction is not granted, as it will not be possible to restore the property to its previous state. I therefore allow the Plaintiff's Notice of Motion for the foregoing reasons.

I accordingly order that the Defendants, their servants, agents and or employees be and are hereby restrained from entering, excavating, stone mining, damaging and/or in any way dealing with Land Reference Number 8442 located at Mwiki Njiru in the City of Nairobi, pending the hearing and determination of this case or until further orders.

The costs of the Plaintiff's Notice of Motion dated 19th July 2012 shall be in the cause.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this ____22nd____ day of ____October____, 2013.

P. NYAMWEYA

JUDGE