



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Suit 157 of 2011

FILISTA CHEMAIYO SOSTEN.....PLAINTIFF

VERSUS

SAMSON MUTAI.....DEFENDANT

RULING

The application is brought under order 40 Rule 1, 2 and 9 of the Civil Procedure Rules 2010 and Sections 1A 1B and 3A of the Civil Procedure Act.

The Applicant is seeking orders that a temporary injunction do issue restraining the Respondent, his agents from dealing or interfering in any way with the Applicants quiet possession, use and enjoyment of land parcel No. **NANDI/BARATON/1646** and that the Respondent be stopped from ploughing, planting or doing any acts, that are inconsistent with the Applicant's rights as the registered owner of the suit land pending the hearing and determination of the suit.

The Applicant relies on the grounds set out in the application dated 9th March, 2012 and the Supporting and Supplementary Affidavits made by **FILISTA CHEMAIYO SOSTEN**.

The Applicant and the Respondent put in written submissions to support their arguments.

The Applicant depones that she is the registered owner of parcel NO. **NANDI/BARATON/1646** which measures 3.18 hectares. The Applicant annexed a copy of the Title Deed to the application, marked as annexure "FCS1".

The Applicant states that the Respondent trespassed and encroached on her parcel of land claiming ownership and started ploughing the said parcel of land.

She further depones that she has been living on the said parcel of land and the Respondents actions have occasioned her and her family great loss and damage.

The Applicant avers that the Respondent has no conceivable proprietary interest in her said parcel of land.

The Applicant prays that the orders for injunction be granted as she had made out a prima facie case with high chances of succeeding in her suit.

The Applicant stated that if the orders were not granted she would suffer irreparable loss as the Respondent was cutting down trees and committing acts of wanton destruction. The Respondent had also moved onto the land and has ploughed and planted crops.

The Applicant stated that she had satisfied the conditions set out in the case of **GIELLA –VS- CASSMAN BROWN** and therefore prayed for the injunctive orders to be re-instated with costs.

The Respondent opposed the application and relied on the affidavits made by **SAMSON MUTAI**. The Respondent also relied on his written submissions.

The Respondent averred that the temporary injunction granted to the Applicant had lapsed and he had therefore moved onto the suit land and commenced ploughing and planting of crops. That the application was therefore overtaken by events as he was already in occupation and that reinstatement of the injunctive orders would adversely affect him negatively particularly in financial terms by causing him losses as he had heavily invested in the ploughing and planting crops.

The Respondent further submitted that the Applicant had not disclosed the numerous suits pending with regard to the suit land involving the Respondent and the Interested party.

The Respondent prayed that the Applicant's application be dismissed with costs as she had not satisfied the threshold set out in the authority of **GIELLA –VS- CASSMAN BROWN**

I have read the Applicant's written submission and the Respondents and have also read the application and the affidavits in support and in reply.

True there are numerous other suits pending and some have been dismissed but the suits are as between the Respondent and the Interested party and relate to land parcel **NO. NANDI/BARATON/383** and not land parcel No. **NANDI/BARATON/1646**.

The Applicant has annexed a Title Deed to her application showing that she is the registered proprietor of parcel No. **NANDI/BARATON/1646**.

The Title in itself speaks for itself and speaks volumes. It is trite law that the Title issued is sacrosanct and indefeasible and can only be nullified by a court of law.

The Applicant has shown that she is the Registered owner by producing the said Title and has shown that the subject matter needs protection. The Respondent has deponed to the fact that he moved onto the Applicant's land and is ploughing the land thus confirming interference.

The court is satisfied that the Applicant has made out a prima facie case.

All the other issues arising from the numerous existing suits as between the various parties can be canvassed at the hearing of the main suit.

The Respondent has confirmed in his affidavits that he has moved onto the land and has ploughed and planted crops and stands to suffer substantial loss if the injunctive orders are reinstated.

Likewise, by denying the Registered owner an opportunity to plough and plant and reap from her piece of land this too will also cause suffering and loss to the Applicant which can be described as irreparable as she will not be able to plant, harvest and profit from her land this season.

The same loss the Respondent states he will incur is the same substantial loss the Applicant stands to incur.

An injunctive order is an equitable and discretionary remedy given when the subject matter of the case needs protection.

The court is satisfied that the application is meritorious and that the subject matter needs protection and that the application meets the threshold set down in **GIELLA –VS- GASSMAN BROWN & CO. LTD (supra)**

The injunctive order is hereby reinstated as set out hereunder;

- 1) The Respondent and or his agents are hereby restrained from dealing and or interfering in anyway with the Applicant's quiet possession, use and or enjoyment of the land known as parcel No. **NANDI/BARATON/1646** and are also stopped from ploughing, planting and or doing any acts inconsistent with the Applicant's rights as the registered owner of the said parcel of land pending the hearing and final determination of the suit.
- 2) The Applicant shall furnish an undertaking as security for costs and damages. The same shall be furnished and filed in court within the next five (5) days from the date hereof.
- 3) The Applicant must move with due diligence and speed to have the main suit listed for hearing within the next six (6) months from the date hereof.
- 4) In default the Respondent is at liberty to move this court for the discharging of the order for injunction.
- 5) The Applicant shall have the costs of the application.

Dated, Read and Delivered in Eldoret this 4th day of May 2012.

**A.MSHILA
JUDGE
Coram:**

Before: Hon. A Mshila J

CC: Andrew

Counsel for the Applicant: Kamau holding brief for Mutai

Counsel for the Respondents: Nabasenge for Respondent.

**A.MSHILA
JUDGE**