



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Case 195 of 2001**

**KANGOGO CHEPKEITANY.....**  
**PLAINTIFF**

**VERSUS**

**LABAN CHELELGO.....**  
**.....DEFENDANT**

**RULING**

The respondent in the instant application brought this action against the applicant for an order of eviction from parcel of land No.BARINGO/KAPROPITA/427.

An interlocutory judgment was entered in default of appearance and defence. In allowing the applicant’s application for setting aside that judgment, the court (Maraga, J as he then was) declared that:

**“As the plaintiff has title to the suit piece of land and the defendant has been evicted therefrom, I order that the defendant shall stay out of the suit piece of land until this suit is heard and determined.”**

The applicant who is the defendant herein has now brought chamber summons dated 23<sup>rd</sup> March, 2011 for orders of a temporary injunction to restrain the respondent from:

**“.....entering, cutting trees, alienate, disposing, tilling, cultivating, leasing or in any way interfering with the defendant’s quiet possession of the subject parcel of land.....”**

It is the applicant’s contention that he was born on the suit property where his family has live for generations; that the respondent has invaded the suit property and is engaged in unlawful cutting of trees, fencing and cultivating.

In response, the respondent has deposed that he is the registered owner of the suit property and that the applicant is not in possession of the property. I have taken into consideration written submissions and authority cited.

Being an application for interlocutory injunction, the applicant must demonstrate that he has a *prima facie* case with a probability of success; that he stands to suffer substantial loss that is not capable of compensation by an award of damages. Should the court be in doubt, it must decide the matter on a balance of convenience. See **Geilla V. Cassman Brown & Co. Ltd.** (1973) EA 358

In considering the question of *prima facie* case, it is important to note that the court is not expected to make any definite finding of either fact or law as that is a preserve of the trial court. It will suffice if it is shown that some right of the applicant has been violated by the opposite party to warrant calling upon that party to rebut the allegation. See **Mrao Limited V. First American Bank of Kenya Limited** (2003) KLR 125.

In terms of **Order 40 rule 1** of the **Civil Procedure Rules**, a temporary injunction will issue if it is proved by affidavit, *inter alia*, that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party or wrongfully sold in execution of a decree.

The applicant has not demonstrated to my satisfaction that the respondent is about to do any of the things listed above. No evidence has been presented to show that the respondent is about to waste, damage, wrongly alienate or sell the suit property.

Secondly, the respondent is the registered owner of the suit property. The applicant has not proved *prima facie* his proprietary interest in the suit property. He (the applicant) is also not in possession. It would be unconscionable to restrain a lawful owner of a property from doing any of the acts sought to be restrained in this application.

In the result, this application fails and is dismissed with costs.

**Dated, Signed and Delivered at Nakuru, this 3<sup>rd</sup> day of May, 2012.**

**W. OUKO**  
**JUDGE**