



REPUBLIC OF KENYA

IN THE HIGH COURT

AT ELDORET

Civil Case 77 of 2012

**MICHAEL ONYANGO OTUKO:.....:PLAINTIFF**

**VERSUS**

**JOSEPH MUINAMI KINYANJUI:.....:DEFENDANT**

**RULING**

The plaintiff, **Michael Onyango Otuko**, seeks interlocutory injunctive relief to restrain the defendant, **Joseph Muinami Kinyanjui** by himself, his servants and/or agents from continuing to harass, intimidate, destroy and trespass onto land parcel Number Langas Phase II sheet IV Plot No. 331 (hereinafter “the suit plot”), pending the hearing and determination of this suit. The application is supported by the plaintiff’s affidavit sworn on 27<sup>th</sup> April, 2012. In the affidavit, it is deponed, *inter alia*, that the plaintiff is an innocent purchaser for value of ¼ of an acre of land parcel Number Langas Phase II Sheet IV Kasarani which he has developed and upon which he lives; that on 22<sup>nd</sup> February, 2012 the defendant in the company of police officers commenced destroying his property claiming that they had an eviction order; that he then obtained a restraining order from the Chief Magistrate’s Court which order was subsequently discharged as the Learned Magistrate declined jurisdiction hence this application; that the defendant threatens to continue with the acts complained of above unless restrained by an order of injunction.

The application is opposed and there is a replying affidavit sworn by the defendant. In the affidavit it is deponed, *inter alia*, that he purchased the suit land way back in October, 2002, for Kshs. 200,000/- from one **Femina Kahega**, now deceased, who in turn had purchased the same from one **Jason Otiende Mahanda**; that he is in occupation of the suit land; that the plaintiff invaded the land and destroyed property thereon; that the chief restrained all parties from using the land and subsequently resolved that the suit land was his; that notwithstanding the chief’s decision, the plaintiff planted maize on the suit property; that subsequently the plaintiff commenced construction upon the suit property, but was stopped by the municipal Council of Eldoret; that the respondent then lodged a complaint with the Land Disputes Tribunal against **Jason Otiende Mahanda** which resolved the dispute in his favour; that the said decision was adopted as a judgment of the court; that an eviction order was issued against the said **Jason Otiende Mahanda**; that the applicant in fact lives on parcel number Langas Phase II plot number 332 which is not the suit land; that the respondent is currently in occupation of the suit land and has maize and other vegetation thereon and in the premises the relief sought is not available to the applicant.

The application was canvassed before me on 9<sup>th</sup> May, 2012. Parties reiterated their stand-points in their respective affidavits.

I have considered the application, the affidavits filed both for and in opposition to the application and the submissions made to me. Having done so, I take the following view of the matter. The principles for the grant of a prohibitory interlocutory injunction are well settled. The same were crystallised in the case of **Giella -Vs- Cassman Brown and Company Limited [1973] E.A. 358**. They are as follows:-

- 1) An applicant must show a prima facie case with a probability of success at the trial;**
- 2) An interlocutory injunction will not normally be granted unless an applicant can show that he would suffer irreparable loss if the injunction is not granted;**
- 3) If the court is in doubt, it should decide the application on a balance of convenience.**

The affidavit evidence before the court does not demonstrate with certainty the issue of ownership of the suit property to enable the court to conclusively determine who is in actual occupation of the suit land. The plaintiff has deposed that he has peacefully developed and occupied the suit land and in the same affidavit he avers that the defendant has persisted to trespass into the suit land and continues to destroy his property. On his part, the respondent has deposed that he is already in occupation of the suit land where he has planted maize and other vegetation.

Given the conflicting averments in the affidavits filed, I will decide this application on the balance of convenience which in my view tilts in favour of maintaining the status quo to preserve the suit land. Accordingly I grant an order restraining the eviction of the plaintiff from  $\frac{1}{4}$  of an acre of land parcel Number Langas Phase II Sheet IV Kasarani, pending the hearing and determination of this suit. For the avoidance of doubt, this order does not confer any right over the said parcel upon the plaintiff which he did not have at the time of filing this application. The order of injunction is granted on condition that the plaintiff files an undertaking as to damages within five (5) days from the date hereof. Such undertaking should be under oath.

Costs shall be in the cause.  
It is so ordered.

**DATED AND DELIVERED AT ELDORET**

**THIS 13<sup>TH</sup> DAY OF JUNE, 2012**

**F. AZANGALALA**  
**JUDGE**

**Read in the presence of:-**  
**Ms. Ayuma for the Plaintiff and**  
**The Defendant.**

**F. AZANGALALA**  
**JUDGE**

**13<sup>TH</sup> JUNE, 2012**