



REPUBLIC OF KENYA

High Court at Nakuru

Civil Case 265 of 2012

MOITALEL OLE

DIKIR.....PLAINTIFF

VERSUS

ANN TIMANTO ENE LOONTUBU.....DEFENDANT

RULING

This is the plaintiffs notice of motion dated 23rd July 2012 under certificate of urgency seeking interim orders to restrain the Defendant by herself, her agents, servants from entering, trespassing, transferring, selling, alienating, erecting structures, leasing or in any way from interfering with the subject parcel of land title CIS MARA/ROTIAN/263 hereinafter referred to as the “*subject parcel of land*” and a copy of the said interim orders be served upon the OCS Narok Police Station for effective compliance pending inter-parties hearing of the application. He also applied for a temporary injunction pending the hearing and determination of the suit restraining the Defendant herself, her agents, servants from entering, trespassing, transferring, selling, alienating, disposing, tilling, cultivating, erecting structures, leasing or in any way from interfering with the subject parcel of land and a copy to be served upon the OCS Narok Police Station for effective compliance.

The Application is anchored on the affidavit of Moitalel Ole Dikir sworn on 23rd July 2012. The grounds are that the Plaintiff is the owner of the subject parcel of land measuring approximately 4.05 Hectares, having bought the subject parcel of land from one Kepela Ole Koroï which was subdivided from a mother title CIS-MARA/ROTIAN/255. He was however shocked upon visiting his land to find the Defendant had illegally entered into the subject parcel of land and was in the process of erecting posts and had started cultivating on the land without the plaintiffs consent. To authenticate ownership he visited the surveyor Narok District and obtained a map of the land showing that he was the registered owner of the subject parcel of land. He avers that his title deed to the said parcel of land cannot be severed and/or interfered with and that the action by the Defendant breaches his right to own property as envisaged in the constitution and hence this application. The plaintiff states that he has made several requests to the Defendant to vacate the subject parcel of land but the Defendant has refused and continued forcefully to cultivate on the subject parcel of land without his consent.

The Plaintiff's application was certified urgent on 23rd July 2012 and the Plaintiff directed to serve for inter parties hearing on 14th November 2012.

The Defendant was served with the application dated 23rd July 2012 and an affidavit of service filed on 11th November 2012 sworn by Richard Kipkirui Kerich.

To be granted an injunction the applicant must satisfy the principles set out clearly in *Giella Vr*

Cassman Brown and Company Ltd (1973) E.A 358. He must show a prima facie case with a probability of success. Secondly, that he stands to suffer irreparable harm not compensable in damages, and thirdly, if in doubt, the court must assess the balance of convenience.

I find that the Plaintiff has demonstrated that he has a prima facie case with a likelihood of success and he may suffer irreparable loss if the orders sought are not granted.

I therefore allow the application dated 23rd July 2012, and order as follows:-

(1) THAT pending the hearing and determination of the suit this Honourable Court be pleased to issue orders of temporary injunction restraining the Defendant by herself, her agents, servants from entering, trespassing, transferring, selling, alienating, disposing, tilling, cultivating, erecting structures, leasing or in any way from interfering with the subject parcel of land known as **CIS MARA/ROTIAN/263** and a copy hereof be served upon the OCS Narok Police Station for effective compliance.

(2) That costs be in the cause.

Dated, signed and delivered at Nakuru this 30th day of November 2012

L. N. WAITHAKA

JUDGE

PRESENT

Hon. Lady Justice L Waithaka

CC: Ray

Both counsels : absent

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