



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Civil Case 283 of 2012**

**ISAAC MWANGI KANYORO.....PLAINTIFF/APPLICANT**

**VERSUS**

**STEPHEN WAGITA KIBOI.....DEFENDANT/RESPONDENT**

**RULING**

The Notice of Motion dated 31/2/2012, was filed by Isaac Mwangi Kanyoro against Stephen Wagita Kiboi. The applicant seeks the following orders:-

**(c) That an interim order of injunction do issue restraining the defendant either by himself, his agents, servants and anybody else whatsoever either claiming in or by his names from entering, remaining, interfering, erecting structures or in any other way whatsoever from dealing with the one (1) acre of land as manifested in Title Nos. Nyandarua/Ol'Kalou Central/5115 and 5116 which are distinct and owned by the plaintiff pending the hearing of this application inter-partes;**

**(d) That the defendant be condemned to pay the costs of this suit.**

The application was supported by grounds found in the body of the application and the affidavit of the applicant dated 31/7/2012.

It is the applicant's case that by an agreement dated 20/5/2011, he bought ½ acre plot from the defendant/respondent part of Title Nyandarua/Ol'Kalou Central/1502, at a price of Kshs.160,000/-. He purchased another plot from the respondent on 20/8/2011 from the same title at a consideration of Kshs.160,000/-. The agreements were witnessed by his family members. A surveyor was involved in the excision of the land and the consent of the Land Control Board was sought to transfer plots 5115 and 5116 which resulted from the subdivision of the main plot 1502. The transfers were executed before a lawyer. The applicant then went to the Land Registrar for removal of the caution placed on the title by the respondent's wife. By a letter dated 16/4/2012, the wife of the respondent was asked to show cause if she had an objection but there being no response from her, the titles were issued to him on 29/5/2012. However, on 27/6/2012, the respondent entered the land and started constructing structures thereon. He attached photographs (IMK8). The matter was reported to Ol'Kalou Police Station and the respondent was arrested and charged in Nyahururu Principal Magistrate's Court in Criminal Case No. 1094/2012, with offence of forcible detainer. The respondent pleaded guilty and was convicted. The applicant deponed that the respondent is still interfering with the suit land and he has been constrained to file this application.

John Maina Muriu, a process server based in Nyahururu swore an affidavit to the effect that on 3/8/2012,

he served the instant Notice of Motion on the respondent with the plaint. The respondent did not attend court and the application proceeded to hearing ex-parte.

The only issue for consideration is whether the applicant satisfies the conditions for grant of an interim injunction as espoused in **Giella Cassman Brown & Co [1973] EA 358**. Firstly, the applicant has to demonstrate that he has a prima facie case with a probability of success; secondly, that if the order of injunction is not granted the applicant will suffer irreparable injury; lastly, if the court is in doubt, it will decide on a balance of probability. In the instant case the applicant has demonstrated that he is the registered owner of the plots Nyandarua Ol'Kalou 5115 and 5116. The exhibited sale agreement between him and the respondent (IMK(1), Mutation forms (IMK3), consent of the Ol'Kalou Land Control Board at Nos. 32 and 33 of the minutes of the Board, (IMK4) and the title deeds in the name of the applicant. The respondent was convicted in Nyahururu Principal Magistrate's Criminal Case No. 1094/12, where he was charged with forcible detainer to which he pleaded guilty. That is indeed evidence that he had trespassed and occupied into the applicant's land. I am satisfied that the applicant has demonstrated that he has a prima facie case with high chances of success. Having so proved, it is unnecessary to consider the other ingredients because it follows that if the respondent is not restrained by an order of injunction the applicant will suffer irreparably.

For the above reasons, the applicant is entitled to an order of injunction as prayed, to restrain the respondent either by himself, his agents or servants, claiming, entering or interfering, erecting or in any way interfering with the applicant's enjoyment, occupation of the suit land pending the hearing of this suit. Costs to abide the suit.

**DATED and DELIVERED this 9<sup>th</sup> day of November, 2012.**

**R.P.V. WENDOH**  
**JUDGE**

**PRESENT:**

Mr. Kipkoech holding brief for Mr. W. Ndegua for the plaintiff/applicant

N/A for the defendant/respondent

Kennedy – Court Clerk