



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
CIVIL SUIT NO. 8 OF 2010

RECHO NEKESA NGOKHO.....PLAINTIFF

AND

BEATRICE NGOKHO.....} 1ST DEFENDANT

MELAP NGOKHO.....} 2ND DEFENDANT

PETER NGOKHO.....} 3RD DEFENDANT

AMOS NGOKHO.....} 4TH DEFENDANT

JAIRUS NGOKHO} 5TH DEFENDANT

DAVID MASIKA NGOKHA} 6TH DEFENDANT

RULING

1. The notice of motion dated 29th March, 2010, is taken out by the plaintiff/applicant who is seeking for a mandatory order of injunction to remove the respondents from parcel No. Kakamega/Nzoia/198 pending the hearing and the determination of this suit.

This application is premised on the grounds that the plaintiff is the sole proprietor of the suit land; however the applicant contends that the respondents' have continued to use it as if it was theirs. The applicant has not been able to use her land due to the respondents' hostilities and interferences. This application is also supported by the affidavit of the applicant sworn on 29th March, 2010.

2. According to the applicant, she was allocated the suit premises measuring 17.0 Ha in 1966 by the Settlement Fund Trustees. She annexed a copy of the allotment letter and she was subsequently issued with a title **No. Kakamega/Nzoia/198** in November 2009. The applicant complains that the respondents and the wives and children of the late **Jeremiah Ngokho Wamocho** who was also her husband have interfered with her peaceful occupation of the suit land. The respondents have their own parcel of land which was allotted to them, being plot No. 197 Nzoia scheme. The respondents have however invaded the plaintiff's land and threatened to throw her out of the suit land that is why she is seeking for an order of injunction.

3. The respondents are represented by the firm of **Kwengu & co. Advocates**. That firm was served with this application but did not file any replying affidavit or grounds of opposition. **Mr Wafula** who held brief for Mr. Kwengu, unsuccessfully sought leave of the court to make submissions from the bar.

The principles to guide the court on whether to grant a mandatory order of injunction are well articulated in a long line of authorities by the Court of Appeal especially in the case of **Kenya Breweries Ltd. & Another Vs. Washington Okeyo C. A. Civil Appeal NO. 322 (Nairobi)** (unreported) at page 3. Their Lordships quoted with approval the Text Vol. 24 of Haslbury Laws of England 4th Edition paragraph 948 which reads as follows:-

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff... A mandatory injunction will be granted on an interlocutory application.

Also in **LocaBail International Finance Ltd. V. Agro export and others [1986] 1 ALL ER 901 at page 901** it was stated:-

“a mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

These principles of law enunciated in those decisions have received full approval in other cases within our Courts. (See the cases of: **Belle Maison Limited vs Yaya Towers Limited HCCC 2225 of 1992 per Bosire, J (as he then was) and the Ripples Limited vs Kamau Mucuha HCCC No. 4522 1992 per Mwera J.**)

4. In this case, the respondents were duly served with the application. However they did not file any replying affidavit thus the facts deposed to by the applicant are not contraverted. The applicant has annexed a copy of the letter of allotment that was issued to her in 1966. Subsequently she was issued with a title which she has annexed to support her claim that she is the sole proprietor of the suit premises. In my view, this is a clear case where a mandatory order of injunction can be granted. Because the applicant is the registered owner of the suit premises and she complains that the respondents have been interfering with her peaceful occupation of her land. Accordingly, I allow the notice of motion dated 29th March, 2010 in terms of prayer No. 1. The applicant shall also have the cost of this application.

Ruling read and signed on 13th April, 2011.

M. KOOME

JUDGE