



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.539 OF 2010

JOEL MWANGI KAMAU.....PLAINTIFF/APPLICANT

VERSUS

**JAMES MWANGI NGANGA T/A
KIANJAU INVESTMENT.....DEFENDANT/RESPONDENT**

R U L I N G

1. Joel Mwangi Kamau (hereinafter referred to as the applicant), seeks an order of injunction restraining James Mwangi Nganga t/a Kianjau Investments (hereinafter referred to as the respondent), his agents and or servants from trespassing, selling or offering for sale and or in any other way dealing with the plaintiff's Land Parcel No.4953/2191 situated in Thika Municipality within Thika District (hereinafter referred to as the suit property), and that the officer in charge Thika Police Station be ordered to enforce compliance.
2. The application is anchored on the ground that the applicant is the grantee from the Government of Kenya of the suit property. On diverse dates the respondent illegally entered the suit property. The applicant has now learnt that the respondent is illegally offering the suit property for sale to innocent 3rd parties misleading them that he is the bona fide owner of the suit property. The applicant therefore fears that unless an order of injunction is issued the respondent may cause the applicant to suffer irreparable loss and damage.
3. The respondent objects to the application through grounds of opposition dated 6th December, 2010. The respondent contends inter alia that the application is founded on a suit that does not disclose any cause of action against the respondent. It is maintained that even assuming the allegations made by the applicant are true they do not amount to trespass. It is further argued that having prayed for damages, the loss if any that he is likely to suffer is not irreparable. The court is therefore urged to reject the application as it does not satisfy the conditions set out in the case of *Giella vs Cassman Brown [1973] EA 358*.
4. I have carefully considered the application and the submissions made before me. Firstly, I find that although the application is brought under Order XXXIX Rules 1, 2 and 9 of the Civil Procedure Rules which deals with temporary injunction, the order sought by the applicant is not one of a temporary

nature. It is not an interim order but one having finality and therefore is in the nature of a permanent injunction. Such an order cannot be granted at this stage before the parties are given an opportunity to present their evidence.

5. Secondly, the application is based on information which the applicant alleges to have “learnt” that the respondent is illegally offering the suit property for sale. Nonetheless, the applicant has not revealed the source of this information nor has he exhibited anything that would demonstrate the alleged actions of the respondent. In the circumstances the applicant has failed to demonstrate that there is any breach or threatened breach of his rights. I find that the applicant has not established a prima face case with a probability of success such as to justify the issuance of the order sought. In the circumstances, I find no merit in the chamber summons dated 11th November, 2010. The application is accordingly dismissed with costs.

Dated and delivered this 18th day of February, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Maina H/B for Ngigi for the plaintiff/applicant
Advocate for the defendant/applicant absent
B. Kosgei - Court clerk