



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Environmental & Land Case 15 of 2010**

NACHHATTAR SINGH RANAUTA .....1<sup>ST</sup> PLAINTIFF/APPLICANT  
AMARJIT KAUR RANAUTA .....2<sup>ND</sup> PLAINTIFF/APPLICANT

V E R S U S

ALEXANDER KILONZO KITIVO.....1<sup>ST</sup> DEFENDANT/RESPONDENT  
ANTHONY NJAU .....2<sup>ND</sup> DEFENDANT/RESPONDENT  
COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT/RESPONDENT

**R U L I N G**

The Plaintiffs are husband and wife. In the supporting affidavit sworn on 14<sup>th</sup> January 2010 by the 1<sup>st</sup> Plaintiff it is demonstrated that the Plaintiffs are proprietors of all those pieces of land known as Land Reference Numbers 7785/879 and 7785/880 situated in Runda Estate Nairobi and they hold titles to the same pursuant to transfers dated 25<sup>th</sup> February, 2009 duly registered in the Land Titles Registry as I.R. No. 73453/7 and I.R. No. 73454/7 respectively. “NSR1”, “NSR2”, “NSR3” and “NSR4” are copies of the said transfers and the certificates of title in respect of the two plots comprising the suit premises. They bought the suit premises from the vendors named in the transfers who had acquired the same in 1997 from Mae Properties Limited. It was alleged that prior to the transfers to the Plaintiffs the deed files for the suit premises because unavailable at the Land Registry and following this the 1<sup>st</sup> Defendant emerged claiming to be the owner of the premises and was holding certificates of title marked “NSR8” and “NSR9”. There was extension but unsuccessful effort to trace the files. The Land Registry was made to reconstruct the files following which official searches were obtained. These are “NSR 12” and “NSR13”.

The Plaintiffs have been in quiet possession of the land plots since acquisition which plots they wanted to develop their houses thereon. In October, 2009 they brought a contractor on site who begun moving building equipment and materials thereon. This is when the 1<sup>st</sup> Defendant called to say the premises were his. On 24<sup>th</sup> December, 2009 the local District Commissioner dropped a letter on the site. The letter is “NSR 14”. In the letter was a copy of the title to plot 880 and its search showing the 1<sup>st</sup> Defendant was the owner. Subsequently, the 2<sup>nd</sup> Defendant entered the premises and left four persons who ordered the Plaintiffs personnel out. On 6<sup>th</sup> January, 2010 the 1<sup>st</sup> Plaintiff went to the office of District Commissioner at Westland and produced his documents of ownership. He went to Runda Police Station and with the Officer Commanding

Station went to the site and found two stores he had erected on the site had been broken into and the four persons had taken possession. The four persons were arrested and he managed to reinstate his guards to protect the property. On 11<sup>th</sup> January, 2010 he found 10 people on the premises intimidating his guards and saying they had been sent by the second Defendant to take over the premises. These people have continued to hang around the premises threatening to take them over. This is the reason the Plaintiffs filed this suit seeking a declaration that they are the genuine and rightful owners of the plot; an order of permanent injunction to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Defendants; a declaration that the title documents held by the 1<sup>st</sup> Defendant are fictitious, null and void; general damages; and costs. With the suit was filed an application for a temporary injunction to restrain the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and those acting under them from trespassing into the plots. The application was made under **Order 39 rules 1(1), 2 and 3** of the **Civil Procedure Rules**. An *ex parte* interim order was granted and the matter listed for *inter parte* hearing. The plaint, summons and application were served but did not elicit any response from the Defendants.

The Plaintiffs say the 3<sup>rd</sup> Defendant was enjoined in the suit so that he could confirm who between the two parties held genuine documents.

The principles to be considered for the grant of interlocutory injunction have been settled since the case of **GIELLA – VS- CASSMAN BROWN & CO. LTD [1973]EA 358**. The Applicant has to demonstrate a *prima facie* case with a probability of success, and has to show that if the injunction is not granted he will suffer irreparable loss or injury that cannot be compensated for by damages. If the court is in doubt, the application should decide the matter on the balance of convenience.

The Plaintiffs have produced documents to support their plea that they are the registered proprietors of the two parcels in dispute. Such registration gives them a *prima facie* absolute and indefeasible claim to the plots and, in the absence of any challenging claim, they have demonstrated a probable case. It is a necessary incident of ownership of property to have full and exclusive possession. (See **CHERUIYOT –VS- BARTIONY [1985] KLR 422**). On the face, the intrusion on the plots by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the damage and continued threat to enter or occupy the same poses real injury. It is in defiance of the law and the sanctity of property and damages cannot provide appropriate compensation after the injury. The balance of convenience must tilt in favour of the Plaintiffs who have shown they are the registered owners of the premises.

The result is that the application is granted with costs.

**DATED AND DELIVERED AT NAIROBI**

**THIS 15<sup>TH</sup> DAY OF MARCH 2010**

**A. O. MUCHELULE**

**J U D G E**