

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Civil Case 142 of 2009

MARGRET KANINI KANGA PLAINTIFF

VERSUS

MARGRETGATHONI 1ST DEFENDANT
JENNIFER CIAKIRIMO KATHURAKU 2ND DEFENDANT
ZACHARY WILFRED MICHENI 3RD DEFENDANT
ANITA MAITHA 4TH DEFENDANT
WANJA NJOKA 5TH DEFENDANT
ZACHARY NYAMU BAINI 6TH DEFENDANT
JENNIFER NJOKA 7TH DEFENDANT

RULING

The plaintiff by her plaint pleaded that the defendants had unlawfully cultivated on a road reserve that is on Thuci Nkubu road, and thereby had encroached on her property no. *Magumoni/Thuitha/423*. By her plaint, she seeks permanent injunction to stop the defendants using the road reserve fronting her said property. She filed an interlocutory application by way of Chamber Summons. The Chamber Summons is dated 26th September 2009 and is brought under Order XXXIX Rules 1 (a), Rule 2 and Rule 9 of the Civil Procedure Rules. By that application, the plaintiff seeks interlocutory injunction pending the final determination of the suit. In the affidavit in support of the interlocutory application, the plaintiff swore an affidavit where she repeated her pleadings in the plaint. She stated that the defendants were cultivating on the road reserve and in so doing, had encroached her land. The defendants opposed the plaintiff's application by a replying affidavit sworn on 11th November 2009. In that affidavit, the defendants stated that they had cultivated on that road reserve for over 20 years with the express permission of the Engineer of Road Meru South District. They denied that they had encroached the plaintiff's land or that they had impeded her entry into her land. The plaintiff in seeking to injunct the defendants needed to prove that she had proprietary rights over the road reserve. She did not prove it. An injunction cannot be granted in respect of the road reserve. The plaintiff however claimed that the defendants had encroached her land. She was not specific on how much land the defendants had encroached. The very core of an application for injunction is that the plaintiff must prove that she has a *prima facie* case and she must prove that damages could not be able to compensate what she would suffer. See the case **Giella Vs. Cassman Brown Ltd** [1973] E.A. 358. The plaintiff in my view, has failed to meet the threshold of granting an injunction. She has failed to prove on a balance of probability that her land has been encroached by the defendants or that her entry to her land has been impeded by the defendants. She did not contradict the assertion by the defendants that they had cultivated the road reserve for over 20 years. If indeed they have, it is then not clear how suddenly such cultivation can become the subject of an injunction application. The plaintiff to assist the court ought to have provided a report showing the encroachment to her land she alleges. This would have assisted the court. I find that there is no merit in the plaintiff's application and accordingly the Chamber Summons dated 26th October 2009 is dismissed with costs to the defendants.

Dated and delivered at Meru this 21st day of May 2010.

MARY KASANGO
JUDGE