



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NYERI  
Civil Case 18 of 2008

BEATRICE NGIMA MWAI.....PLAINTIFF/APPLICANT

VERSUS

GICHINE MWAI.....1<sup>ST</sup> DEFENDANT/RESPONDENT  
THE LAND REGISTRAR,  
KIRINYAGA LAND REGISTRY.....2<sup>ND</sup> DEFENDANT/RESPONDENT

RULING

BEATRICE NGIMA MWAI, the applicant herein, took out the Summons dated 24<sup>th</sup> September 2009 in which he applied for the following orders *inter alia*:

- “2. THAT a temporary injunction do issue restraining the 1<sup>st</sup> Respondent by himself, his agents and/or servants or otherwise from trespassing, entering, habiting or otherwise interfering with the Applicant’s beneficial title and quiet enjoyment of all that parcel of land known as Land title Number Kiine/Kiangai/33 pending the hearing and final determination of this application.
3. THAT a temporary injunction do issue restraining the 1<sup>st</sup> Respondent by himself, his agents and/or servants or otherwise from trespassing, cutting, maiming or otherwise interfering with the Applicant’s crops, plantations, plants, animals, properties, fixtures, movables and immovable’s situate on Land Title Number Kiine/Kiangai/33 pending the hearing and final determination of this application.
4. THAT a permanent injunction do issue evicting the 1<sup>st</sup> Respondent by himself, his agents and/or servants or otherwise from the suit premises and prohibiting him his agents or servants from continuing to occupy, remain upon or generally inhabiting Land Title Number Kiine/Kiangai/33 pending the hearing and final determination of this application.”

The Summons is supported by the affidavit sworn by the Applicant. When the application came up for interpartes hearing, the Applicant was granted leave to proceed *ex parte* because the 1<sup>st</sup> Respondent did not turn up neither did he file any response to the application.

It is the submission of the Applicant that the parcel of land known as L.R. NO. KIINE/KIANGAI/33 was transmitted to her vide Nairobi H.C. Succession Cause No. 1168 of 2005 the Estate of Nahashon Mwai Gichine alias Maranga Gichine, deceased. Upon obtaining proprietary interest over the aforesaid parcel of land, the Applicant avers that she gave a quit notice to the 1<sup>st</sup> Respondent but instead of vacating, the 1<sup>st</sup> Respondent resorted to destroying property. It is alleged that the 1<sup>st</sup> respondent cut crops, plants plus immovable and movable fixtures.

I have taken into account the material placed before me and the oral submissions made by the Applicant’s learned counsel. The main order sought by the Applicant is that of a mandatory order of injunction in which the Applicant has prayed for the 1<sup>st</sup> Respondent to be forcefully evicted from L. R. NO. KIINE/KIANGAI/33. before granting an order of mandatory injunction the court must consider the well settled principles. In **SHARIF ABDI HASSAN =VS= NADHIF JAMA ADAN C.A. NO. 121 of 2005 (unreported)** the Court of Appeal restated those principles at page 11 as follows:

*“The law as regards the principle to be applied when considering the two prayers is different from the principles set out in Giela’s case for the standard of approach when considering whether or not to grant mandatory injunction is higher than that in respect of prohibitory injunction. The case of LOCABAIL INTERNATIONAL FINANCE LTD =VS= AGRO- EXPORT AND ANOTHER [1986] 1 ALL E.R. 901 set out the principles applicable in cases of mandatory injunction. It states as follows:-*

*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 easily be remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory injunction the court had to feel a high sense 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.”*

It is clear from the above that the order of mandatory injunction will not be given unless it is shown that the case the court is dealing is very clear. The standard of approach is higher when compared to that of a prohibitory order of injunction. There is no doubt that the Applicant herein is the registered proprietor of the parcel of land known as **L.R. NO. KIINE/KIANGAI/33**. It is also not in dispute that the caution which had been registered against the aforesaid title was removed hence there is no encumbrance against the title as of now. Despite having been served with the application plus the averments contained in the supporting affidavit, the 1<sup>st</sup> respondent has not responded to controvert the averments. The Applicant’s rights are protected under *Sections 27 and 28* of the Registered Land Act. She can only enjoy exclusive possessory rights if the 1<sup>st</sup> respondent is removed. This is one of those clearest cases where the court is satisfied and feels confident that the order of mandatory injunction should be given. In the end I allow the Summons as prayed with costs.

*Dated and delivered at Nyeri this 14<sup>th</sup> day of May 2010.*

**J. K. SERGON**

**JUDGE**

In open court in the presence of Mr. Ng’ang’a holding brief Ogembo and the Respondent is in person.