



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**CIVIL SUIT NO. 48 OF 2002**

**SALINA CHEMUTAI KEINO**

..... **PLAINTIFF**

**VERSUS**

**THE COUNTY COUNCIL OF MARAKWET &  
3 OTHERS .....**

..... **DEFENDANTS**

**RULING**

The Plaintiff/Applicant’s application is for an interlocutory injunction to issue to restrain the County Council of Marakwet from any dealings with the applicant’s plot size 15 x 30 meters at Cheptongei Centre. The grounds in support of the application are that the applicant has a prima facie case with a probability of success as the applicant is the registered absolute owner of the plot. As per her supporting affidavit the defendant’s agents and servants went to the suit plot and took measurements of the same targeting it for demolition to create a road on baseless or illegal grounds and that such action was without notice and amounted to interference with the applicant’s possession of her plot and of the pending suit herein. That the applicant has a letter of allotment of the suit plot. She annexed to the said affidavits documents to prove allotment and payment of rent.

The defendant/respondent field grounds of opposition that the application is bad in law and without merit, made in bad faith and applicant is guilty of laches and that the applicant does not meet the minimum requirements for the grant of the orders sought.

Learned Counsel Mr. Cheptarus for the applicant submitted that the suit plot was allocated to the applicant in 1987 and applicant went into possession and developed the plot and she has a prima facie case. She has continued to pay rents and the defendant should be restrained from interfering with the applicant’s plot.

Learned counsel Mr. Kitur for the respondent submitted that the applicant had been indolent and equity favours on such. He added that the applicant had not made out a prima facie case.

I have given the application due consideration. The applicant must satisfy the grounds set out in **GIELLA –VS- CASSMAN BROWN & CO. LTD. (1973)EA 358** to succeed. Those grounds are that the applicant must show a prima facie case with a probability of success, that an injunction will not normally issue unless the applicant may suffer injury which cannot be adequately compensated by an award of damages and should the court be in doubt then it would decide the application on a balance of convenience.

In this case the applicant has shown by documentary proof that she was allotted the plot in question sometime during 1987. She deponed, and it was not disputed, that she developed the same and she is in occupation. The respondent has not denied that it did not proceed procedurally and neither gave notice nor reasons for its action. In these circumstances I find that the applicant has made out a prima facie case. She should not be made to consider damages in the instant circumstances. She is in possession and the balance of convenience tilts in her favour she was not indolent as the events complained of occurred on 22/9/2008 and she filed instant application on 3/10/2010. Consequently I grant the orders of injunction

as sought.

Orders accordingly.

**DATED SIGNED AND DELIVERED AT ELDORET THIS 15<sup>TH</sup> DAY OF DECEMBER 2010.**

**P.M. MWILU  
JUDGE**

**In the presence of;**

**Advocate for Plaintiff/Applicant  
Advocate for Defendant/Respondent  
Court Clerk**

**P.M. MWILU  
JUDGE**