

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 83 of 2009

JOHN SITIENEI SINGIRA.....PLAINTIFF

VERSUS

**JANE CHEPKERICH.....
Defendant**

RULING

The plaintiff seeks under Order 39 Rules 1,2,3 and 9 of the Civil Procedure Rules for an order “THAT pending the hearing and determination of this application interparties there be a temporary injunction restraining the Defendant/Respondent by herself, her servants and/or agents from alienating, disposing off wasting, dealing and/or anyway interfering with the Plaintiff’s/Applicant parcel of land known as NAKURU/NESSUIT/119 measuring approximately 20.24 Hectares and that she should be ordered strict to the 2½ offered to her.” It is not clear what is meant by “strict to the 2¹/₂ offered to her” but after perusing of the application together with the affidavit in support, I suppose the plaintiff meant to have the defendant confined to the 2¹/₂ portion (the suit piece of land) offered to her. The application is based on the ground that although the plaintiff allowed the defendant to occupy that portion of his land situate in Nessuit and known as Title No. Nakuru/ Nessuit/119 on humanitarian grounds, like the proverbial giraffe which was only given shelter for its head but soon deposed the owner of the house, the defendant is now asserting ownership rights of that portion hence this application.

The defendant on the other hand contends that the suit piece of land is hers as of right the same having been allocated to her over 50 years ago. She further contends that in any case titles in the area where the land is situate have been cancelled on the ground that they are on forest land.

I have perused the application and considered these rival submissions. The plaintiff has not disputed the allegation that titles for the area have been cancelled for being in a forest. Other than a copy of the title deed dated 16th July 1997, the plaintiff has not exhibited anything like a certificate of official search to show that the title to his land is still valid. He has also not countered the defendant’s assertion that she is on the suit land as of right. In the circumstances I agree with counsel for the defendant that this application has not met the threshold for grant of injunctions set out in Giella Vs Cassman Brown Co. Ltd. [1973] EA 358 and followed in several subsequent cases including Teresa Shitaka Vs Mary Mwamodo & Others [1982-88] 1 KAR 965. Consequently I dismiss this application with costs.

DATED and delivered this 19th day of May, 2009.

D. K. MARAGA

JUDGE.