

JOSEPH MWAURA NJOROGE PLAINTIFF

VS.

PATRICK GITHINJI DEFENDANT

RULING

The plaintiff, Joseph Mwaura Njoroge is the father of the defendant Patrick Githinji. He is the registered proprietor of a parcel of land known as Dagoretti/Riruta/3732 in Nairobi. He has sued his son for interfering with the said parcel of land by chasing away his tenants and thereby embarrassing him. He has asked the defendant to stop his interference but he has not.

In this suit, he asks for a permanent injunction to restrain the defendant, his servants and/or agents from interfering with his property. Alongside the said plaint, he filed an application by way of Chamber Summons under Order XXXIX rules 1 and 2 of the Civil Procedure Rules for an interim injunction pending the hearing of the suit.

The defendant opposed this application. The grounds upon which the plaintiff seeks restraining orders against the defendant are set out on the face of the application and also his own affidavit annexed thereto. It is his case that he is the registered proprietor of land parcel Dagoretii/Rirutta/3732 which he has developed and let out to various tenants. The defendant has been unlawfully interfering with the tenants therein and threatened the plaintiff regarding the use of the land.

In reply to the application, the defendant states that whereas it is true that the plaintiff is the registered proprietor of parcel of land aforesaid, he holds title in his capacity as a trustee for his children in line with the practice relating to ancestral land; the plaintiff having acquired the title as beneficiary of the estate of his late grandfather one Njoroge Gathuku. He denied that he has interfered with any of the tenants and at no time has he threatened to do so.

Both learned counsel have filed written submissions in addressing this application.

I have gone through all those submissions and the cited authorities. Some of the submissions belong to the province of a full hearing after all the evidence has been adduced and recorded. As of now, the plaintiff is only required to show that he has a prima facie case with a probability of success and that if the orders are not granted, he shall suffer irreparable injury that cannot be compensated by an award of damages. If the court is in doubt, it shall decide the matter on a balance of convenience.

The plaintiff as I have said is the registered proprietor of the said parcel of land. His registration is absolute going by the provisions of Section 27 of the Registered Land Act (Cap 300) Laws of Kenya. It would require evidence to be adduced to prove that he holds the property in trust for his children or anybody else for that matter. But now it is trite law that, rights of children over the parents' property remain inchoate until the said parents die.

In the instant case, the plaintiff who is the father of the defendant and his other eleven children who are still alive, have no reason to bar him from enjoying the benefits that accrue from his property. In the absence of any evidence to the contrary at this stage that he is the absolute owner and that he does not hold any property in trust for his children, I cannot deny him the orders sought. I am satisfied that he has satisfied the principles of granting of an injunction and therefore order that he shall benefit from the orders sought in the Chamber Summons dated 10th March, 2009 until the final determination of this suit.

Each party shall bear his own costs.

Orders accordingly.

Dated, signed and delivered at Nairobi this 26th day of October, 2009.

A. MBOGHOLI MSAGHA

JUDGE