

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

OF KISII

Civil Case 116 of 2005

HELLEN CHEPKURUI SIGEI PLAINTIFF

VERSUS

JULIANA CHEPKOROS DEFENDANT

RULING

By an application dated 12th November, 2007, the plaintiff sought to restrain the defendant from trespassing upon, interfering with, cultivating, constructing and/or in any way whatsoever dealing with land Reference Numbers TRANS-MARA/KIMINTET D/1353 & 1354 (hereinafter referred to as “*the suit lands*”) pending the hearing and determination of this suit.

The application was supported by the plaintiff’s affidavit wherein she deposed that she was the registered proprietor of the suit lands and annexed copies of the title deeds. The suit lands were previously registered in the name of Joseph Cheruyiot Sigei, now deceased. The defendant had objected to the registration of the suit lands of in the name of Joseph Cheruyiot Sigei but the objection was disposed of and the Adjudication records closed, culminating into the registration of the suit lands in the name of the deceased.

The plaintiff deposed that sometimes in October 2007, the defendant trespassed upon the suit lands and began to construct temporary structures thereon. The defendant was said to be occupying a portion of the suit lands and was also forcibly cultivating that portion.

On 14th November, 2007 Gacheche J. granted interim injunctive orders against the defendant. The defendant filed a replying affidavit and denied having trespassed into the suit lands. She stated that there was a land dispute over parcel No.923 within Kimintet D Adjudication Section. The dispute was heard by the minister through the District Commissioner, Trans mara. He decided that parcel No. 923 be subdivided into two equal portions and the defendant was to take the portion on which her homestead lies. That was done resulting into two parcels of land, No.1428 for the plaintiff and 1429 for the defendant.

The defendant denied that she was in occupation of any portion of the suit lands. She stated that she had constructed some structures on land parcel No.1429 which she was lawfully occupying. She attached to her affidavit the proceedings of the case before the minister as well as a sketch that showed how parcel No.923 was sub-divided to create the two sub-divisions, 1428 and 1429. That sub-division exercise was carried out on 8th august 2007. there is a letter from the District Surveyor, Trans mara to that effect.

I have carefully considered the plaintiff’s application and the reply thereto. It is not clear whether the two parties refer to the same parcels of land. Whereas the plaintiff is the registered proprietor of the suit lands since 17th November, 2005, there is nothing in her affidavit that shows that those two parcels of land are in any way related to parcel no.923 in Kimintet ‘D’ Adjudication Section which was the subject matter of the appeal before the minister.

It is trite law that for an interlocutory injunction to issue, the applicant must first show that he has a prima facie case with high chances of success. That is the first principle in the celebrated case of

GIELLA VS CASSMAN BROWN CO. LTD [1973] E. A. 358 . In this matter, the plaintiff has not established such a case because the issues raised by the parties and the discrepancies in description of the property in dispute can only be resolved in a full hearing. The plaintiff, having failed to clear the first hurdle, I need not consider the other principles because the conditions in **GIELLA VS CASSMAN BROWN** (Supra) are supposed to be applied sequentially. The plaintiff's application is dismissed with costs.

DATED, SIGNED AND DELIVERED at KISII this 16th day of April, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

Mr. Ochwangi for the Plaintiff, Mr. Ondari for the defendant.

D. MUSINGA

JUDGE