



1. Land and Environmental Law Division.

2. Subject of main suit :-LAND/Trespass

Eviction

3. Application 21st February 2008

Injunction

a) restrain defendants 1,2,3,& 4 from entering land and harvesting trees burning charcoal.

4. No reply by defendants 1, 2, 3, and 4 – served.

5. Held

a) Injunction to issue till finalization of suit.

b) Probability of success

i) Parties before Land Adjudication Officer

ii) Appeal by plaintiff to minister

iii) Minister granted 60%:40%. Share of land
respectively

iv) Appeal to Higher Court

v) High Court on appeal Visram J. upheld the
ministers' findings

vi) The respondents evade plaintiff's land and
cause destruction.

vii) That court hereby holds injunction to issue
due to prohibiting of irreparable loss pending the main suit.

6. Case Law

7. Advocate

W Kimeria of Wamahiu Kimeria & Co. Advocates for the plaintiff/applicant – present

Musyoka Kavingo)

Mutinda Kavingo) Defendants in person

Mwema Kavingo)

Munywoki Kavingo)

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Environment and Land Case 51 of 2008

WANZA ILELIPLAINTIFF

V E R S U S

MUSYOKA KAVINGO 1ST DEFENDANT

MUTINDA KAVINGO 2ND DEFENDANT

MWEMA KAVINGO 3RD DEFENDANT

MUNYWOKI KAVINGO4TH DEFENDANT

R U L I N G

APPLICATION 21ST FEBRUARY 2008.

INJUNCTION

I: PROCEDURE

1. Wanza Ileli, herein the plaintiff in this application and suit seeks orders of injunction against:-

Musyoka Kavingo,

Mutinda Kavingo,

Mwema Kavingo and

Munywoki Kavingo

“restraining the four jointly and severally from trespassing upon harvesting trees, burning charcoal, harvesting red soil and interfering with the plaintiff’s peaceful and quiet possession of LR No. Nyambani/Nyanika/2906 until the hearing and determination of the main suit”.

2. The matter was not certified as urgent by Kariuki J and was set down for hearing on 7th April, 2008. All four respondents were duly served on 1st March 2008. None put in grounds of opposition or replying affidavit at the time of hearing only

Musyoka Kavingo and Mwema Kavingo the 1st and 3rd defendants/respondents appeared to court.

3. The application having proceeded under Order xbr3 (a) Civil Procedure Rules.

II BACKGROUND OF APPLICATION

4. The parties have been in dispute over land for at least 30 years. The land matter went before the adjudication officer who apportion the land ownership between the plaintiff and the 1st defendant at a portion not satisfactory to the plaintiff. The plaintiff appealed to the Minister. The matter took 14 years to make a decision on the appeal. On 24.5.04 his decision was that land be approved 60% to the plaintiff and 40% to the defendant No. 1. Defendant No.1 being dissatisfied filed a Judicial Review in this High Court being Miscellaneous Criminal Application 951/04. It came before Visram J who upheld the Minister's decision.

5. The 1st, 2nd, 3rd and 4th defendants invaded the land and began wasting it. The plaintiff filed this new suit of HCCC 51/08 seeking injunction orders to restrain all four from wasting the said land.

III OPINION

6. In relying on the principles of **Giella Cassman Brown & Co. Ltd [1973] E.A 358** the court must satisfy itself that he had a prima facie case, there may be irreparable loss and that in the balance of convenience dictates whether an injunction should issue if in doubt.

7. In this case this court is satisfied that the plaintiff has a probability of success in her suit. She had been successful in her past cases. Her main case is for the eviction and for restraining the defendants from dealing with the land. If they do so, she will suffer loss.

8. I hereby grant the application for injunction till the termination of the suit. There will be costs to the applicant.

DATED THIS 8TH DAY OF APRIL 2008 AT NAIROBI

M. A. ANG'AWA

J U D G E

W. Kimeria of Wamahiu Kimeria & Co. Advocates for the plaintiff/applicant – present

Musyoka Kavingo)

Mutinda Kavingo) Defendants in person

Mwema Kavingo)

Munywoki Kavingo