



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Case13 of 2006**

**JOSEPH WAWERU MUURI.....PLAINTIFF**

**VERSUS**

**THE PRINCIPAL MAI MAHIU SECONDARY SCHOOL.....1<sup>ST</sup> DEFENDANT**

**BOARD OF GOVERNORS MAI MAHIU SECONDARY SCHOOL.....2<sup>ND</sup> DEFENDANT**

**RULING**

The plaintiff has made an application under the provisions of **Order XXXIX Rules 1,2 and 3** of the **Civil Procedure Rules** and **Section 3A and 63(e)** of the **Civil Procedure Act** seeking the order of this court to restrain the defendants by themselves, their servants, agents and employees by means of a temporary injunction from entering into, trespassing on and or in any other way interfering with the plaintiff's possession of parcel No. *KIJABE/KIJABE BLOCK 1/4060* pending the hearing and determination of the suit filed. The plaintiff has further prayed for an order of this court to compel the defendants by means of a mandatory injunction to demolish and to remove any constructions or improvement made on the plaintiff's said parcel of land pending the hearing and determination of the suit. The application is supported by the annexed affidavit of the plaintiff and based on the grounds stated on the face of the application. In the said grounds the plaintiff has stated that he is the owner of the suit land. He further stated that the defendant had trespassed into the said suit premises and had commenced developments and thereby interfered with the plaintiff's possession of the suit premises. He further states that he would suffer irreparable loss and damage if the said interference is not stopped. The plaintiff swore a further affidavit on the 13<sup>th</sup> of February 2006 in further support of his application.

The application is opposed. Naftali Chege, the 1<sup>st</sup> respondent and secretary to the 2<sup>nd</sup> respondent swore a replying affidavit in opposition to the application. In the said affidavit he has stated that the parcel of land which the plaintiff was claiming was part of the land owned by the school *i.e.* parcel number *KIJABE/KIJABE BLOCK 1/3571*. He further deponed that the plaintiff had not established how he came to own the said parcel of land or acquired title to the same a longtime after the other titles had been issued in respect of the entire block of land. He further swore that from the registered index map there was no indication that the said parcel of land was bordering the parcel of land owned by the school. He urged the court to dismiss the plaintiff's application.

At the hearing of the application, Mr Njaramba learned counsel for the plaintiff submitted that the plaintiff was the owner of the suit land. He submitted that the plaintiff had been issued with a title in respect of the said parcel of land. This fact was confirmed by the defendants who had annexed a green card clearly showing that the plaintiff was so registered as the owner of the suit land. He further submitted that the survey plan and the registered index map showed that the suit land was a distinct portion of land separate from the parcel of land occupied by the defendants. He submitted that the plaintiff had established a prima facie case that he is the owner of the suit land. He further submitted that the defendants had interfered with the plaintiff's possession of the suit land by erecting structures on it without the authority of the plaintiff. He submitted that the plaintiff had established that he would suffer irreparable damages if the order of injunction is not issued. He submitted that the plaintiff had satisfied the principle enunciated in the celebrated case of **Giella –vs- Cassman Brown [1973] EA 358**. He urged the court to allow the application.

Mr. Kuria, learned counsel for the defendants opposed the application. He reiterated the contents of the replying affidavit and submitted that the plaintiff had not satisfied the principles for the grant of temporary injunction. He submitted that the parcels of land in question were demarcated and titles issued in 1985 according to the registered index map which was annexed to the replying affidavit of the 1<sup>st</sup> defendant. He submitted that according to the said map, parcel number 4060 which is claimed by the plaintiff was created when parcels number 2239, 2261 and 3399 were amalgamated. He submitted that the said parcels of land were not bordering the defendants' parcel of land. He argued that the title which was issued to the plaintiff had suspicious entries because it stated that the register in respect of the said parcel of land was opened in 1999 whereas the plaintiff was issued with a title in respect of the same in 1991. He further submitted that the plaintiff had not shown how the said parcel of land was created; was it as a result of consolidation or subdivision? He submitted that it was clear that the plaintiff had 'grabbed' part of the parcel of land which the school had occupied since 1998. He urged the court to dismiss the application for injunction with costs.

I have carefully considered the arguments made before me by the counsel for the plaintiff and the counsel for the defendants. I have also read the pleadings filed by the parties to this suit in support of their respective rival positions. The issue for determination by this court is whether the plaintiff has satisfied the principles set down by the law for the grant of interlocutory injunction. Certain facts are not in dispute in this case. It is not disputed that the plaintiff is the registered owner of the parcel of land known as *KIJABE/KIJABE BLOCK 1/4060*. Although the record at the Lands office disclose some discrepancy as to the dates when the register was opened, the said title is a valid document issued by the government and has not been challenged by the defendants. The dispute in this suit is actually the location of the said parcel of land on the ground. Whereas the plaintiff claims that the said parcel of land is distinct and separate from the defendants' parcel of land, the defendants submitted that the parcel of land claimed by the plaintiff is part of the land owned by the school. To prove its case, the defendants have annexed a copy of the registered index map which indicate that the said parcel of land is adjoining the school land. According to the defendants, the parcel of land which the plaintiff is claiming, is part of the school land. The defendants accuse the plaintiff for having 'grabbed' the same from the school.

Having carefully evaluated the facts of this case and the applicable law as set down in the case of **Giella – vs- Cassman Brown [1973] E.A. 358**, I do hold that the plaintiff has established that a *prima facie* case that he is the owner of the suit land. Although the defendants claim that the parcel of land in question was 'grabbed', that is an issue which would be determined during the hearing of the main suit. The registered index map (R.I.M.) annexed to the defendants replying affidavit clearly show that the said parcel of land is distinct and separate from the parcel of land owned by the school. The issue of the discrepancy of the entries made in the title will be addressed during the hearing of the main suit.

This court therefore will grant temporary injunction to restrain the defendants from undertaking any developments on the suit land pending the hearing and determination of the main suit. The purpose of granting this injunction is to maintain the *status quo* on the ground pending the hearing and determination of the main suit. In that regard the plaintiff should not also interfere with the said parcel of land by undertaking any developments thereon and therefore changing the *status quo*. I will however not grant the order of mandatory injunction sought by the plaintiff. He has not established that his case is of such exceptional nature that it would require the intervention of this court by the grant of mandatory injunction. The issues in dispute as regard whether or not the suit land was hived off from the school land is an issue which will be determined in the main suit.

In the circumstances therefore, the application for injunction is granted as prayed in prayer 3 of the application. The plaintiff shall have the costs of the suit. He shall however not undertake any permanent developments on the said suit land pending the hearing of the said main suit.

**DATED at NAKURU this 3<sup>rd</sup> day of March 2006.**

**L. KIMARU**

**JUDGE**