



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Njoka (Environment and Land Case Civil Suit E174 of 2022)
[2022] KEELC 15528 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15528 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E174 OF 2022**

J OMANGE, J

DECEMBER 20, 2022

BETWEEN

DICKSON GITHINJI MAINA PLAINTIFF

AND

LUCY MUTHONI NJOKA DEFENDANT

RULING

1. The applicant filed a Notice of Motion application under Certificate of Urgency dated 17th day of May, 2022 seeking for the following orders;
 - a. Spent.
 - b. That pending the hearing and determination of the application the defendant/respondent be restrained by way of an order for injunction from trespassing, cultivating, constructing, or in any other way interfering with the plaintiffs quiet possession of land parcel Title No. Nairobi/ Block 105/9515.
 - c. That pending the hearing and determination of the suit here the defendant/respondent be ordered to remove her structures on the plaintiff/ applicants land parcel Title No. Nairobi/ Block105/9515.
 - d. That the court grant any orders it deems fit.
 - e. That costs of the application be provided for.
2. The application is premised on the grounds that the applicant is the registered proprietor of the Land Parcel title No. Nairobi/Block 105/9515 since 2019. The application is supported by an affidavit by Dickson Githinji Maina who avers that he was in physical possession of the land since the 1990s. The applicant avers that the respondent herein has trespassed on his land.



3. On her part, the respondent has filed a replying affidavit in which she challenges the averments of the applicant and the survey reports that he has relied.
4. The principles for grant of an injunction were well laid out in the celebrated case of *Giella v Cassman Brown*. These are the issues for consideration before me; Does the applicant have a *prima facie* case? Would the applicant suffer irreparable harm that cannot be compensated by way of damages? Lastly where does the balance of convenience lie?
5. The applicant has produced a certificate of title to prove that he is the owner of the land. However from both the affidavit of the applicant and that of the respondent, it is clear that they are both holders of title but there is contestation on the ownership of buildings which are in the said property.
6. From the contested facts adduced by both parties it not possible to determine at this interlocutory stage that the applicant has a right that is superior to that of the respondent. As such the court cannot order the removal of structures when the facts are so unclear. The applicant's application also lacks material particulars such as the date or even year the respondent commenced the trespass.
7. On the limb of irreparable loss, it should be proved that the applicants would not be adequately compensated by way of damages. This has not been proved. In view of the foregoing the balance of convenience tilts in favour of not issuing the injunction before the court has an opportunity to hear the parties and clarify the facts. However the status quo should be maintained while awaiting the hearing.
8. Article 159 the Constitution of Kenya commands the court to promote Alternative forms of Dispute Resolution. Section 20 of the Environment and Land Court Act further provides a window for the court to promote amicable settlement of disputes. The courts and all parties should give effect to these constitutional and statutory edicts. This is a matter that clearly involves two neighbours. It would be in the interest of preserving their relationship to resolve the dispute amicably. This courts finds that it is interests of justice to give them this opportunity by referring them to Court Annexed Mediation which the Judiciary has now fully embraced as a door for dispute resolution.
9. In the circumstances the court makes the following orders;
 - a. The status quo to be maintained until the hearing and determination of the suit.
 - b. The matter is referred to Court Annexed Mediation. A Mention date to be taken for this purpose.
 - c. Costs of the application in the cause.

Dated, signed and delivered at Nairobi this 20th day of December 2022.

Judy Omenge

JUDGE

In the presence of: -

Ms Muriethi for the Applicant

Ms Amutabi the Respondent

Steve - Court Assistant

