



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 828 OF 2017

(Formerly Milimani ELC Case No. 234 of 2016)

FLORENCE SOILA NGOSSOR.....PLAINTIFF

VERSUS

RIKOYAN OLE KUKU.....1ST DEFENDANT

GEOFFREY NDUNGU GATHII.....2ND DEFENDANT

ROOTS INVESTMENTS COMPANY LIMITED3RD DEFENDANT

DCF ENGINEERING COMPANY LIMITED.....4TH DEFENDANT

JEFFERY ROBIN MEIN.....5TH DEFENDANT

DESTERIO OYATSI.....6TH DEFENDANT

KIRIINYA MUKIRA.....7TH DEFENDANT

THE LAND REGISTRAR, KAJIADO COUNTY.....8TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....9TH DEFENDANT

RULING

What is before Court for determination is the 7th Defendant's application dated the 14th October, 2020 brought pursuant to section 1A, 1B and 3A of the Civil Procedure Act as well as Order 40 Rules 1, 2, 3, 4 & 5 of the Civil Procedure Rules. The 7th Defendant seeks orders of injunction against the Plaintiff in respect to land parcel number Kajiado/ Kaputiei North/ 2966 pending the determination of the suit. The Application is premised on the grounds on the face of it and the supporting affidavit of KIRIINYA MUKIIRA where he confirms being the registered proprietor of land parcel number Kajiado/ Kaputiei North/ 2966 which he has enjoyed quiet possession of, for 21 years. He claims the Plaintiff has been trespassing on the said parcel of land, cutting down the fence, bringing unsuspecting buyers with the intention of disposing of the land. Further, during the pendency of this suit, the Plaintiff has proceeded to lodge a complaint over the aforementioned parcel of land with the Directorate of Criminal Investigation (DCI) and the Director of Public Prosecution (DPP), which investigations have since concluded and inquiry confirmed that his ownership of the land was procedural. He explains that during the pendency of the investigations, the Plaintiff kept harassing him by abusing him via messages calling him all manner of names and bringing hooligans to the land to cut down trees. Further, the property is in danger of being sold and or interfered with by the Plaintiff. He insists the Plaintiff has no legal right or authority whatsoever to interfere with his proprietary rights and interests over the aforementioned property pending the hearing and determination of the suit. He reiterates that the Plaintiff has been interfering with his peaceful enjoyment of the aforementioned parcel of land and he is currently constructing temporary structures thereon for purposes of providing security over the land from unsuspecting buyers being brought thereon by the Plaintiff, her proxies, agents or any other person.

None of the Respondents, despite being duly served opposed the application.

The 7th Defendant filed his submissions to canvass the application.

Analysis and Determination

Upon consideration of the Notice of Motion dated the 14th October, 2020 including the supporting affidavit and the submissions, the only issue for determination is whether a temporary injunction should issue restraining the Plaintiff or her agents and or servants from interfering with land parcel number Kajiado/ Kaputiei North/ 2966 pending the outcome of this suit.

The 7th Defendant in his submissions reiterated his claim and contended that he had established a prima facie case to warrant the orders sought. He averred that he stood to suffer irreparable loss and damage if the orders sought were not granted. To buttress his averments, he relied on various decisions including **Giella Vs Cassman Brown & Co. Ltd (1973) EA 358; Panari Enterprises Limited Vs Lijoodi & 2 Others (2014) eKLR; Nyayo Embakasi Residents Association (Suing through its registered officials George Ochola & 3 Others Vs National Social Security Fund & 2 Others (2015) eKLR; and Mrao Ltd Vs First American Bank Ltd & 2 Others (2003) KLR 125.**

In line with the principles on injunction enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, I will proceed to interrogate whether the 7th Defendant has established a prima facie case with a probability of success at the trial.

In the first instance as to whether the 7th Defendant has demonstrated a prima facie case with probability of success, I wish to make reference to the case of **Mrao Limited Vs. First American Bank of Kenya Limited & 2 others (2003) KLR 125** where the Court defined a prima facie case. I note the 7th Defendant is the current registered proprietor of land parcel number Kajiado/ Kaputiei North/ 2966. The 7th Defendant alleged that the Plaintiff has trespassed on the land, cut down trees and is showing third parties his land with an intention to dispose of it. The 7th Defendant contended that he was compelled to put up temporary structures thereon for purposes of security. From the Court Records, I note on the 1st July, 2019, parties had agreed to maintain the obtaining status quo and comply with Order 11 of the Civil Procedure Rules with a view to setting down the suit for hearing. In this instance, I note the aforementioned parcel of land is one of the parcels of land in dispute and the Plaintiff despite being duly served with the instant application, failed to file a response hence the 7th Defendant's averments remain uncontroverted. Based on the facts as presented and relying on the two cited decisions, I find that the 7th Defendant has indeed established a prima facie case as against the Plaintiff to warrant the grant of orders sought.

On the second principle as to whether the 7th Defendant stands to suffer irreparable loss which cannot be compensated by way of damages. I note the Plaintiff did not deny the allegations of trespass in respect to land parcel number Kajiado/ Kaputiei North/ 2966. Further, from the Certificate of Title held by the 7th Defendant, it is evident he has been the registered proprietor from 4th September, 1998 to date. In the case of **Case of Nguruman Ltd. Vs. Jan Bonde Nielsen CA No. 77 of 2012**, it was held that

“ ...the applicant must establish that he ‘might otherwise’ suffer irreparable injury which cannot be adequately compensated remedied by damages in the absence of an injunction, this is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot ‘adequately’ be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy”.

Based on my analysis above and associating myself with this decision, I find that the 7th Defendant's injury are not speculative as he will indeed suffer grave and irreparable injury if the injunctive reliefs are denied.

On the question of balance of convenience, from the evidence presented by the parties, I am not in doubt that if land parcel number Kajiado/ Kaputiei North/ 2966 is not preserved pending the determination of the dispute herein, it will indeed be wasted away. In the circumstance, I find that the balance of convenience indeed tilts in favour of the 7th Defendant.

It is against the foregoing that I find the application dated the 14th October, 2020 merited and will allow it with costs to be borne by the Plaintiff.

Dated signed and delivered virtually at Kajiado this 19th day of January, 2021.

CHRISTINE OCHIENG

JUDGE