



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**ELCC No. 24 OF 2020**

**GILBERT MAYIEKA OGATO .....PLAINTIFF**

**VERSUS**

**RAYMOND KIPLAGAT ..... 1<sup>ST</sup> DEFENDANT**

**NAKURU GRAINS MILLS LTD .....2<sup>ND</sup> DEFENDANT**

**RULING**

1. By Notice of Motion dated 13<sup>th</sup> March 2020, the plaintiff seeks the following orders:

a) *[Spent]*

b) *[Spent]*

c) *THAT this Honourable court be pleased to issue a temporary injunction restraining the defendants either by themselves, their agents, servants, employees, tenants or otherwise howsoever from entering, trespassing, occupying, charging, carrying on any further development, interfering with the plaintiffs quiet and peaceful occupation or dealing in any way with all or any portion of those parcels of land known as L.R. No 22652 and L.R. No 22653 in any manner whatsoever prejudicial to the interests of the plaintiff pending the hearing and determination of this suit.*

d) *THAT the Officer Commanding Station (OCS) Kaptembwo Police Station do supervise the peaceful execution and compliance of this order.*

e) *THAT the costs of the application be provided for.*

2. The application is supported by an affidavit sworn by Gladys Sarara who described herself as the plaintiff's wife. She deposed that sometime in January 2002, the plaintiff purchased the parcel of land known as L.R. No. 22653 from Kenneth Kiptala Kamuren but misplaced the sale agreement. She added that the plaintiff took immediate possession of the property together with the neighbouring parcel known as L.R. No. 22652 which was vacant. That the plaintiff and her have been in uninterrupted occupation of the two parcels with the knowledge of the defendants for a period of over 18 years and that they built an iron sheets house on the land engaged workers to take care of the house and tend crops. That they have acquired the properties by adverse possession.

3. She further deposed that the plaintiff went back to America where he is residing and that sometime in March 2020, the plaintiff and her learnt that the 1<sup>st</sup> defendant transferred L.R. No. 22653 to the 2<sup>nd</sup> defendant in October 2017 and that the 1<sup>st</sup> defendant was claiming to be the registered owner of L.R. No. 22652 since 1<sup>st</sup> March 1996. She annexed copies of certificates of title and certificates of search. She added that on 1<sup>st</sup> March 2020, the defendants sent youth who destroyed the fence around the suit properties, caused construction materials to be deposited on them and started construction of a perimeter wall.

4. The 1<sup>st</sup> defendant opposed the application through a replying affidavit in which he deposed that he was the registered owner of both L.R. No. 22652 and L.R. No. 22653 and that he transferred them to the 2<sup>nd</sup> defendant. He added that the properties were allocated to him in 1996 and that he was never aware of any other person claiming them until an issue was raised when the 2<sup>nd</sup> defendant constructed a perimeter wall.

5. The 2<sup>nd</sup> defendant responded to the application through a replying affidavit sworn by Ken Kemboi Kipruto, its General Manager. He confirmed that the 2<sup>nd</sup> defendant is the owner of the suit properties having purchased them from the 1<sup>st</sup> defendant. He added that there was no one on the plots when the 2<sup>nd</sup> defendant started erecting a perimeter wall around them in February 2020 and that the wall has since been completed.

6. The application was canvassed through written submissions. I have duly considered the application, the affidavits and the submissions. As a litigant seeking an interlocutory injunction, the plaintiff is duty bound to satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358** which entails establishing a *prima facie* case with a probability of success. Even if he succeeds on that first limb, an injunction will not issue if damages can be an adequate remedy. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**.

7. There is no dispute that the 2<sup>nd</sup> defendant is the registered owner of L.R. No. 22653. The plaintiff himself also concedes that the 2<sup>nd</sup> defendant is claiming L.R. No. 22652. The 2<sup>nd</sup> defendant has placed before the court documents to support its alleged acquisition of the said property. On the other hand, the plaintiff has not availed any document to support his alleged purchase of L.R. No. 22653. Nevertheless, I take into account that the plaintiff is also seeking to establish a claim of adverse possession over both parcels. Such a claim is ordinarily grounded largely on oral evidence and cannot be wished away at this stage. It can only be resolved upon full trial.

8. In the circumstances, it is crucial that the suit properties be preserved pending determination of the dispute at the hearing of the suit. Indeed, **paragraph 32 of Gazette Notice No. 5178** titled “**Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts**” encourages preservation of the suit property. It provides:

*During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.*

9. I will therefore make an order preserving the status quo. To further secure the objective of preserving the suit property, I will also grant an order of inhibition.

10. I therefore make the following orders:

**a) Status quo existing on the parcels of land known as L.R. No. 22652 and L.R. No. 22653 as at the date of delivery of this ruling is maintained pending hearing and determination of this suit.**

**b) An order of inhibition be registered against the parcels of land known as L.R. No. 22652 and L.R. No. 22653 pending hearing and determination of this suit.**

**c) Costs of Notice of Motion dated 13<sup>th</sup> March 2020 shall be in the cause.**

**Dated, signed and delivered at Nakuru this 18<sup>th</sup> day of January 2021.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Konosi for the plaintiff

Ms Kathurima and Mr Opar for the defendants

Court Assistants: B. Jelimo & J. Lotkomoi