

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 343 OF 2002

JACKSON KAMAU KINYATTIPLAINTIFF
VERSUS
JOSEPH MAKAU KANGUTADEFENDANT

RULING

Submissions made by counsel, for all the parties herein, more so that by counsel for the third defendant and the annexures referred to by her, strongly gives the impression that the applicant has not made out a prima case with the probability of success as required in the conditions set out in the case of Giella v Cassman Brown & Co. Ltd. [1973] E.A. 358 to warrant the issue of a temporary injunction in this case.

In holding this view I am persuaded by the third defendant annexure SKN 5 to his replying affidavit which shows the existence of the road now in dispute which goes across the applicants to the 3rd defendant's land 1273 though he himself denies its existence.

There is also persuasive submission by the counsel for the third defendant that in fact this road existed much earlier than the time the applicant acquired his portion of land No. 2150 from L.R. No. 1375.

With this kind of evidence the applicant has an insurmountable task to persuade this court that he has established a prima facie case with the probability of success to be entitled to an order of temporary injunction pending the hearing and final disposal of the case.

The applicant is aware of proceedings which have been going on between him and the 1st, 2nd and 3rd defendants over this road, be it at the Land Registrar's office or court but his counsel did not want to touch on these until the counsel for defendant's referred to them.

He was even aware of the origin of his annexure JKK 2 yet he wanted to give this court the impression that the 3rd defendant was using the police to harass him when he knew this was not true.

This application is for an equitable remedy and he who comes to equity must do so with clean hands which the applicant has not satisfied the court he has.

I dismiss this application with costs.

Delivered this 12th day of March, 2002.

D.K.S. AGANYANYA

JUDGE