

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 1444 OF 2000 (O.S.)

DANIEL NG'ANG'A MUGO.....PLAINTIFF

- V E R S U S -

HENRY MWANGI KIHONGEDEFENDANT

R U L I N G

The Plaintiff brings this application seeking a temporary injunction restraining the Defendant from interfering with his ownership, possession and user of L.R. NO. FORTHALL LOC. 3 MUKURIA/394 (hereinafter referred to as "the suit land") until determination of this suit.

By some arrangement the Plaintiff was let into possession of the suit land in 1986 on which he has carried on tea farming. He claims adverse possession of the suit land on the basis that he has been in occupation of the same since 1986 to date. The Defendant disputes that claim stating that the Plaintiff has had access to the suit land from time to time and has not been in continuous user as alleged. In 1993, the Defendant was registered as the owner of the suit land through succession.

The issue for this court's determination is whether it is appropriate to issue a temporary injunction in favour of the Plaintiff in the circumstances of this case.

The principles upon which this court will act in dealing with an application for an interlocutory injunction were settled by the famous case of **Giella v. Cassman Brown & Co. Ltd.** [1973] E.A. 358. In general, the court will act on the following principles:

- (a) The applicant must show a prima facie case with probability of success;
- (b) it must be shown that irreparable damage will be caused if the application is refused; and
- (c) when the court is in doubt, it should decide the application on the balance of convenience.

Having looked at the affidavits of the parties and having heard submissions by their counsel I do not doubt that the Plaintiff's case raises serious issues fit to go to the trial Judge for adjudication. The parties tried to argue some of those issues but I must warn myself not to try them here at the interlocutory stage. Whether the Plaintiff has been in an interrupted possession or not is a matter for the trial Judge. For me, it is clear that if this application is denied, the Plaintiff's tea farm stands to be wasted. Whether the Plaintiff has been a lessee or not, and whether he has paid his rent or not, it was not controverted that he is carrying on tea farming on the suit land.

This court is of the view that, in the circumstances of this case, the balance of convenience tilts in favour of the Plaintiff and the application must be so resolved.

I, therefore, allow this application with costs.

DATED and DELIVERED at NAIROBI this 7th day of May, 2001.

ALNASHIR VISRAM

JUDGE.