



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E128 OF 2021

HENRY KIPKORIR KIMUTAI.....PLAINTIFF

**(SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THE LATE
JEREMIAH KIMUTAI CHERUIYOT)**

VERSUS

GAJJARS AND COMPANY.....1ST DEFENDANT

THE LAND REGISTRAR, NAIROBI.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. Before me is a Notice of Motion dated 14.4.2021 in which the Applicant /Plaintiff is seeking orders of temporary injunction restraining the Respondent from dealing with the suit parcel Nairobi Block 93/1512 until the suit is heard and determined. The Applicant avers that he is the legal administrator of the estate of Jeremiah Kimutai Cheruiyot who was allotted the suit property and he had taken immediate possession of the same. That Jeremiah passed on sometime in the year 2019 before the lease was registered in his name, but he had erected a restaurant on the suit land known as Nerkwo Inn.
2. In his submissions dated 25.11.2021, the Applicant avers that he has met the threshold for issuance of the injunction orders in line with the principles set out in the case of **Giella v Cassman Brown (1973) EA 358**. He has also reiterated the averments set out in his application and supporting affidavit. He added that since the land was allotted to deceased, it was not available for alienation to anyone else.
3. To this end, the Applicant relied on the cases of **Rukaya Ali Vs. David Gikonyo Nambacha & Another (Kisumu HCCA No. 9 of 2002)**, **Titus Musya Musee vs Francis Ichamui M’Mwenda (2020)eKLR**, **Chemei Investment Ltd. Vs. The Attorney General & others Nairobi Petition No. 94 of 2005**, **Dr. Josph Arap Ngok vs. Justice Moiyo Ole Keiwua & 5 Others. Civil Appeal No. Nai 60 of 1997**.
4. The 1st Respondent opposed the application vide his replying affidavit dated 8.11.2021. He contends that the application does not meet the required standard for issuance of an injunction. He further states that the documents of ownership availed by the Applicant are forgeries and that the 1st Defendant is the legitimate owner of the suit land as they are the ones who pay the land rates. The respondent has availed a letter of allotment bearing the date of 7.8.1995.
5. In their submissions, the 1st Defendant reiterates that the suit land was allocated to their company on 16.6.1995 and further emphasizes that the documents of ownership availed by the Applicant are forgeries, hence an illegality cannot birth a legality.
6. It is further submitted that the licences availed by the Applicant for their business does not make reference to the suit premises and that there is no confirmed grant to indicate that the suit land belongs to the estate of deceased.
7. The Attorney General (2nd & 3rd Respondents) has not filed any documents in relation to the application.

8. This court will only determine whether the Applicant deserves the injunctive orders based on the usual criteria laid down in the case of Giella...Vs... Cassman Brown & Co. Ltd 1973 EA 358.. Thus the court will not deal with disputed facts with finality during this interlocutory stage.

9. In the instant case, each party is claiming to be the lawful owner of the suit land and they have availed rival documents to that effect. However, the Applicant does state that he carries on a business of a restaurant on the suit premises. The rebuttal by the 1st Defendant is that the legal licence document does not bear the identity of the suit parcel. The 1st Defendant has however not out rightly denied that the land is being utilized by the Plaintiff. In addition, the 1st Defendant has not stated the nature and extent of utilization of the land by themselves since 1995.

10. To this end, I am inclined to allow the application dated 14.4.2021 for the period of one year.

The costs thereof shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

IN THE PRESENCE OF:-

KIRUI FOR THE APPLICANT

OSIEMO FOR THE 1ST DEFENDANT

ALLAN KAMAU FOR THE 2ND AND 3RD DEFENDANTS

COURT ASSISTANT: EDEL BARASA