



REPUBLIC OF KENYA



KENYA LAW
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**Muguna v M’Muga (Environment & Land Case E005 of 2021)
[2022] KEELC 2622 (KLR) (13 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E005 OF 2021**

CK NZILI, J

JULY 13, 2022

BETWEEN

MURIITHI MUGUNA PLAINTIFF

AND

GIKUNDA M’MUGA DEFENDANT

RULING

1. The court is asked to issue a temporary order of injunction barring and restraining the defendant, servants or employees from trespassing or encroaching into L.R No. Igoji/Kiangua/593 until the hearing and determination of this suit. The reasons given are contained on the face of the application and the supporting affidavit by Murithi Muguna sworn on 14.1.2021.
2. The applicant states he has been a registered owner of the suit land with a title deed and occupying the suit premises. That in 2017 the defendant trespassed into and destroyed his trees, fodder and pulled down a canopy of his house to which the applicant had to close his rental houses and a shop. That a report was made to the police and the lands office over the alleged boundary/land dispute but in vain. That the respondent has continued with his acts of trespass causing him loss and damage. The applicant has attached a copy of the title deed, photos, request to land surveyor, OB report to police and a report on assault annexures marked MM1 – 5 respectively to the supporting affidavit.
3. The respondent entered appearance on 16.2.2021 but has not filed any defence or opposed this application.
4. For a party to be entitled to temporary injunction he must establish a prima facie case with a probability of success, prove that he risks suffering irreparable loss and damage which may not be compensated by way of damages and lastly that the balance of convenience tilts in favour of granting the orders. (see *Giella v Cassman Brown* [1973] E.A 348 A prima facie case is established if, based on material placed



before a tribunal that a right has been infringed which calls for a rebuttal from the opposite party. See *Mrao Ltd v First American Bank of Kenya Ltd & 3 others* [2003] KLR 125.

5. In *Khan & another v Habib Bank AG Zurich and another* Civil Case 069 of [2021] [2022] KEH [130] KLR Commercial and Tax 23rd Feb [2022] Ruling and In *Nguruman Ltd vs Jane Bonde Nielson & 2 others* [2014] eKLR the court held that the *Giella v Cassman Brown* principles above are to be applied as separate, distinct and logical handles which an applicant is expected to surmount sequentially.
6. Applying the above principles, the applicant has produced a copy of the title deed and evidence that he has been occupying the suit land for long and made several developments therein. The said title deed under section 24, 25 and 26 of the *Land Registration Act* 2012 is to be taken as a prima facie evidence that the applicant is an absolute proprietor of the suit land. All his pleadings and evidence in the supporting affidavit have not been challenged by the respondent, despite entry of appearance.
7. The applicant has demonstrated there is imminent loss and damage out of the respondent's actions calling for intervention by the court.
8. In my view therefore, the applicant has satisfied the above requirements given he is an absolute proprietor of the suit premises who is entitled to the protection of the law and whose loss and damage may not be compensated by way of damages.
9. The balance of convenience also tilts in favor of granting the application.
10. The upshot is the application dated 14.1.2022 is allowed in terms of prayer 3 but for a period of one year only.
11. Parties to comply with order II Civil Procedure Rules within 45 days and to set the matters down for hearing.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 13TH DAY OF JULY, 2022

In presence of:

No appearance

HON. C.K. NZILI

ELC JUDGE

