



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 108 OF 2019 (OS)

BELINA NANGILA SIMIYU

BENSON WABOMBA PALANGAPLAINTIFFS/APPLICANTS

VERSUS

FRANCIS WAMALWA WERE.....DEFENDANT/RESPONDENT

RULING

The application is dated 10th September 2019 and is brought under order 40 rule 1 of the Civil Procedure Rules, 2010, Section 3A of the Civil Procedure Act, Cap. 21 seeking the following orders;

1. That the service of this application be dispensed with in the first instance.
2. That an interlocutory injunction do issue against the defendant restraining him whether by himself, his servants and or agents from continuing with the construction and/or developments or denying the plaintiffs the user and occupancy, selling and charging or causing the registration of the land parcel known as Kakamega/Sango/83 into his name instead of the estate of the late John Simiyu Palanga – deceased pending the hearing and determination of this application in the first instance and there after pending the hearing and determination of this suit.
3. That the officer in charge Kogo Police Post do assist in enforcing the order.
4. That the costs of this application be sourced by the defendant.

It is based on the grounds that the plaintiffs have a prima facie case with a probability of success. That damages shall not be an adequate remedy. That if in doubt the balance of convenience ought to tilt in favour of maintaining the status-quo. It is supported by the affidavit of Belina Nangila Simiyu. She submitted that she is the administratrix of the estate of one John Simiyu Palanga who was the plaintiff in Kakamega High Court Civil Suit No. 283 of 1991. He died before the conclusion of the said case and the defendant substituted him. The case was ruled in his favour and the defendant got himself registered as the proprietor of the suit land instead of as an administrator. That she has entered a restriction on the suit parcel.

This court has considered the applicant's submissions and the supporting affidavit therein. The respondent was served and failed to attend court and/or oppose the application. The application being one that seeks injunctions, has to be considered within the principles set out in the case of *Giella Vs Cassman Brown & Co Ltd* 1973 E.A 358 and which are:-

1. *The applicant must show a prima facie case with a probability of success at the trial*
2. *The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,*
3. *If in doubt, the Court will decide the application on a balance of convenience.*

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a Court of equity.

The applicants submitted that they are beneficiaries of the estate of John Simiyu Palanga who was the plaintiff in Kakamega High Court

Civil Suit No. 283 of 1991. The application remains unopposed. I find that the applicants have established a prima facie case and I order that the status quo be maintained pending the hearing and the determination of this suit. Cost to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED THIS 6TH DAY OF MAY 2020.

N.A. MATHEKA

JUDGE