

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. E003 OF 2021

DR. JAPHETH OGENDO OWUOR.....PLAINTIFF/APPLICANT

VERSUS

EVANS ANGWEYI & 47 OTHERS.....DEFENDANTS/RESPONDENTS

RULING

By consent of the parties ELC Case No. 2 of 2021 and ELC Case No. 003 of 2021 were consolidated and ELC Case No. 003 of 2021 became the lead file. This application is dated 1st February 2021 and is brought under order 40 Rule 1 and 2 of the Civil Procedure Rules and Section 1A & 1, 63e and 3A of the Civil Procedure Act seeking the following orders;

1. That this application be certified as urgent and service of the same be dispensed with in the first instance.
2. That a temporary injunction do issue restraining the defendants/respondents, their servants, agents and/or assigns in any way from dealing, erecting illegal structures, cultivating and/or interfering with the Plaintiff's/applicant's quiet possession, use right as the registered owner of the land parcel namely Kakamega/Sergoit/12 measuring 25.9 Ha. (75 acres) pending the hearing and determination of this application inter-parties.
3. That the court be pleased to issue an order against the defendants/respondents compelling them to remove the illegal structures, cultivating and/or carrying out any operations from the plaintiff's suit land namely Kakamega/Sergoit/12 measuring 25.9 Ha. (75 acres).
4. That the OCS, Soy Police Station to supervise compliance of the said orders.

It is premised on the following grounds that the plaintiff/applicant is the registered owner of the suit property known as Kakamega/Sergoit/12 measuring 25.9 Ha. (75 acres). That the plaintiff/applicant acquired ownership in the year 1977. That the defendants/respondents have illegally erected structures without the plaintiff's/applicant's knowledge or consent. That the plaintiff/applicant intends to develop the purchased farm of agricultural and rearing cattle, sheep and other animals. That the defendants/respondents have without any justifiable reason laid a claim of ownership and started erecting structures without the consent and/or authority of the plaintiff/applicant on the suit land. That the plaintiff/applicant stands to suffer great loss and damage if the defendants/respondents herein continue to interfere with applicant's quiet possession of the suit property. That it will therefore be in the interest of justice that the defendants/respondents be restrained by way of an injunction from interfering with the suit property. That the defendants/respondents be compelled to move from the suit land and do operate their businesses elsewhere. That this application has been brought promptly and in good faith. That the plaintiff/applicant has demonstrated a prima facie case with high chances of success and that damages shall not be an adequate remedy in the circumstances.

The respondents submitted that the plaintiff/applicant has not met the threshold for grant of injunctive orders and the instant application should be dismissed with costs. That the defendants/respondents do not dispute the fact that Land Parcel Number Kakamega/Sergoit/12 measuring 25.9 Hectares (75 acres) is registered in the name of the plaintiff/applicant. The defendants/respondents entered the suit property after acquiring portions from the plaintiff/applicant for valuable consideration where the plaintiff/applicant and the defendants/respondents on diverse dates and years made Land Sale Agreements to that effect as can be seen from the Land Sale Agreements attached to the list of documents.

This court has considered the application and submissions therein. 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. That the plaintiff/applicant submitted that he is the registered owner of the suit property known as Kakamega/Sergoit/12 measuring 25.9 Ha. (75 acres). That the plaintiff/applicant acquired ownership in the year 1977. That the defendants/respondents have illegally erected structures without the plaintiff's/applicant's knowledge or consent. The defendants/respondents submitted that they do not dispute the fact that Land Parcel Number Kakamega/Sergoit/12 measuring 25.9 Hectares (75 acres) is registered in the name of the plaintiff/applicant. They maintain that they entered the suit property after acquiring portions from the plaintiff/applicant for valuable consideration where the plaintiff/applicant and the defendants/respondents on diverse dates and years made Land Sale Agreements to that effect as can be seen from the Land Sale Agreements

attached to their list of documents. I have perused that said documents and it seems that the respondents entered into sale agreements with the applicant some as far back as 2005. Some payment receipts and photos of their homesteads have also been attached. I find that the applicant has failed to establish a prima facie case and the balance of convenience falls with the respondents. I find this application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 22ND JUNE 2021.

N.A. MATHEKA

JUDGE