



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC CASE NO. 91 OF 2020

PROF JOSPHAT YEGO.....PLAINTIFF

VERSUS

JOSEPH KIPKOECH.....DEFENDANT

RULING

This ruling is in respect of an application dated 22nd October 2020 by the plaintiff/applicant seeking for the following orders;

- a) Spent
- b) An ex parte order of temporary injunction do issue restraining the Defendant/Respondent by himself, his servants or agents from encroaching onto, destroying fence, putting up structures or in any other way interfere with the Plaintiff/Applicant's right to land parcel ELDORET MUNICIPALITY BLOCK 10/140 pending hearing and determination of this application inter partes.
- c) An interim order of injunction do issue restraining the Defendant/Respondent by its self, its servants or agents from further encroaching onto, destroying fence, felling trees, excavating earth or in any other way interfere with the Plaintiff/Applicant's right to land parcel ELDORET MUNICIPALITY BLOCK 10/140 pending hearing and determination of this suit.
- d) Costs be provided for.

Counsel agreed to canvas the application by way of written submissions which were duly filed.

APPLICANT'S SUBMISSIONS

Counsel relied on the supporting affidavit by the applicant together with the grounds on the face of the application stating that the applicant is the registered owner of the suit land That in April 2020 the respondent put up illegal structures which were pulled down by the local authorities.

It was counsel's submission that the respondent has continued interfering with the applicant's right to the suit land and cited the case of Gella v Cassman Brown r19731 EA 358 on grant of injunctions. The applicant attached a certificate of lease to confirm ownership of the suit land and gave a chronology of the events leading to the registration hence he is a lawful owner of the suit land. Further that he has been paying land rates to the County government.

Counsel also submitted that despite the applicant being registered as the legal owner of the suit land the respondent's continued threats has caused irreparable harm and loss to the applicant. Further that the applicant's averment that he has a lease certificate has not been controverted therefore the balance of convenience tilts in favour of the applicant.

Counsel therefore urged the court to allow the application as prayed as the applicant has met the threshold for grant of temporary injunctions.

RESPONDENT'S CASE

The respondent was granted 14 days to file submissions but the same were never filed at the time of writing this ruling.

ANALYSIS AND DETERMINATION

The issues for determination is whether the plaintiff has met the threshold for grant of injunctions as per the Giella Casman Brown Case. The court is also guided by the provisions of Order 40 of the Civil Procedure Rules which states :

Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

In the case of **Exclusive Estates Ltd Vs Kenya Posts & Telecommunications Corporation & Another, Civil Appeal No.62 of 2004** where the court held that:-

‘A temporary injunction is issued in a suit to preserve the property in dispute in the suit of the rights of parties under determination in a suit pending the disposal of the suit, to preserve the subject matter’

The purpose on temporary injunctions is to preserve the substratum of the case pending the hearing and determination of the suit. If it is not preserved and by the time the court is rendering a determination, there might be no subject matter to enforce the judgment on. The applicant has provided evidence that he has an arguable case by providing documentary evidence of ownership of the property. The applicant produced a copy of certificate of lease and a search certificate which is prima facie proof of ownership.

This application is not controverted by any evidence by the respondent, but that does not mean that if an application is not opposed it is automatically granted. The applicant has to prove his or her case as it were.

I therefore allow the application as prayed. Parties to comply with Order 11 within 30 days.

DATED AND DELIVERED AT ELDORET THIS 15TH DAY OF JUNE, 2021

M. A. ODENY

JUDGE