



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC CASE NO. 228 OF 2019

JOHN KENGO CHOME

KENGO NYAWA MWAJOTO

DOUGLAS CHIMAKO TSUMA

DINGO MWAJOTO NYAWA

CORNELIOUS MRISA TSUMA

SAID SIRIKO MWANYINGO.....PLAINTIFFS/APPLICANTS

VERSUS

GREENBELT WAREHOUSES LTD.....DEFENDANT/RESPONDENT

RULING

The application is dated 18th December 2019 and is brought under Section 3A of the Civil Procedure Act, CAP 21 and Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules, 2010 seeking the following orders;

1. That this application be certified urgent and be heard *ex parte* in the first instance.
2. That the honourable court does grant a temporary injunction restraining the defendant, its agents and/or servants or any other person acting under its authority from carrying out developments, trespassing upon, cultivating, fencing, selling and/or in any other way dealing with the plaintiffs piece of land measuring approximately 256 acres pending the hearing and determination of this application *inter partes*.
3. That the honourable court grant temporary injunction restraining the defendant, its agents and/or servants or any other person acting under its authority from carrying out developments, trespassing upon, cultivating, fencing, selling and/or in any other way dealing with the plaintiffs piece of land measuring approximately 256 acres pending the hearing and determination of this application and suit *inter partes*.
4. That the Officer Commanding Station, Samburu Police Station, or the Commandant Administration Police, Kwale County, do assist in the immediate enforcement and compliance with these orders by the defendant.
5. Costs of this motion be provided for.

It is based on the grounds that the plaintiffs are the lawful owners of all that piece of land measuring approximately 256 acres situate at Gora Village, Samburu, Kwale County. That the defendant has committed acts of trespass upon the plaintiffs' property by authorizing its agents a ranch by grazing livestock on the suit property without the plaintiffs' consent, clearing vegetation in readiness to cultivate crops and carrying on other agricultural activities on the suit property without as well threatening to shoot the plaintiffs thereby depriving them of their right to possession, enjoyment and entitlement to the suit property. That if the defendant is not stopped the plaintiffs are bound to suffer irreparable loss as they are likely to lose his rightfully owned property. On the other hand, the defendant has no legitimate claim over the suit property.

The respondent submitted that they are the rightful registered owner of the land and that the plaintiffs reside at Suini are at Kinango in Kwale and not Samburu as they claim. That the plaintiffs/applicants herein do not reside at the property but only have relatives who are squatters on the land and do not own the land. That the company bought the land from the original owners being Mdoe Tungwa Baisi as per the sale agreement dated 11 July 2016 ("IDS – 2" is a copy of the sale agreement). That they had a meeting of the locals and the National Land Commission where a report was done and the company's purchase of the land was found to be lawful and authentic and the title was upheld

("IDS-3" is a copy of the National Land Commission Report). That the company did not approach them to buy the land from them but since their family members were squatters they were approached to vacate the same. That the company did not enter into any sale agreement with the applicants but on humanitarian grounds had a memorandum of understanding to give the family Kshs.15,000,000 for them to leave the suit property ("IDS - 4 " is a copy of the memorandum of understanding). That not only have the applicants received Kshs.5,000,000 but also received a further sum of Kshs.3,200,000 in two instalments of Kshs.2,000,000 on 25th September, 2018 and Kshs.1,200,000 on 4th October, 2018 totalling to Kshs.8,200,000 ("IDS-5 A & B" are copies of the acknowledgments). That there was no sale agreement between the applicants and the company is the rightful/lawful, beneficial are registered owner having processed the title deed after buying the suit property from the original owners ("IDS-6" is a copy of the title in the Company's name). That they are not trespassing in their own land as they are the lawful registered owners and they have every right to develop their property as they deem fit.

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. The applicants submitted they are the lawful owners of all that piece of land measuring approximately 256 acres situate it Gora Village, Samburu, Kwale County (hereinafter referred to as the suit property). That the defendant has committed acts of trespass upon the plaintiffs' property by authorizing its agents a ranch by grazing livestock on the suit property without the plaintiffs' consent, clearing vegetation in readiness to cultivate crops and carrying on other agricultural activities on the suit property without as well threatening to shoot the plaintiffs thereby depriving them of their right to possession, enjoyment and entitlement to the suit property. The respondent submitted that they are the rightful registered owners of the land and that the plaintiffs reside at Suini are at Kinango in Kwale and not Samburu as they claim. That the plaintiff/applicants herein only do not reside at the property but only have relatives who are squatters on the land and do not own the land. They claim to have paid some money to the applicants even though they had no sale agreements with them. I find that the applicants have established a prima facie case. If they are not on the suit land as alleged then the status quo can be maintained. I find this application is merited and order that status quo be maintained pending the hearing and determination of this matter. Cost to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH OCTOBER 2021.

N.A. MATHEKA

JUDGE