



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ELC CASE NO. 202 OF 2021**

**ABDI ALI MOHAMED.....PLAINTIFF/APPLICANT**

**VERSUS**

**JAMAL BARNABAS & 15 OTHERS.....RESPONDENTS/RESPONDENTS**

**RULING**

The application is dated 1<sup>st</sup> October 2021 and is brought under Sections 1A, 1B, 3A, 63 (e) of the Civil Procedure Act. Cap 21 Laws of Kenya; Order 40 Rule 1 of the Civil Procedure Rules, 2010 and Article 22, 23, 40 and 47 of the Constitution of Kenya seeking the following orders;

1. That this Application be certified as urgent, service thereof be dispensed with and the same be heard Ex-Parte in the first instance.
2. That the Honourable Court be pleased to issue a temporary injunction restraining the Respondents/Respondents, whether acting by themselves, servants, agents or any person acting on their account, from trespassing into, constructing, carrying out any further activities and or interfering in any manner with the Plaintiffs quiet and peaceful possession, enjoyment and use of any part or portion of the parcel of land known as Title Number 2020/V/MN, CR NUMBER 60865 situated in Jomvu Mikanjuni pending the inter-parties hearing of the application.
3. That the Honourable Court be pleased to issue a temporary injunction restraining the Respondents/Respondents, whether acting by themselves, servants, agents or any person acting on their account, from trespassing into, constructing, carrying out any further activities and / or interfering in any manner with the Plaintiffs quiet and peaceful possession, enjoyment and use of any part or portion of the parcel of land known as Title Number 2020/V/MN CR No. 60865 situated in Jomvu Mikanjuni pending the hearing and determination of the main suit.
4. That that the Officer Commanding Station and the Officer Commanding Police Division, Jomvu Police Station do ensure compliance with orders of the Court.
5. That the costs of this application be provided for.

It is based on the grounds that the Applicant/Plaintiff is at all times material to this suit the registered owner of the suit property known as Land Title Number 2010/V/MN, CR No. 60865 situated in Jomvu Mikanjuni. That the Applicant appointed the 2<sup>nd</sup> Respondent as a caretaker of the suit property being Land Title Number 2010/V/MN on C.R Number 60865. That the Applicant has been in actual possession of the suit property, openly and without any interruption or claim from any party including the Respondents until the suit property was encroached and grabbed by the Respondents. That the Applicant learnt that the 2<sup>nd</sup> Respondent has, without his knowledge and consent sold a portion of suit property to the 1<sup>st</sup> Respondent for a sum of Kshs. 330,000/ — vide a sale agreement dated 5<sup>th</sup> March 2019. That the act of the 2<sup>nd</sup> Respondent was fraudulent and illegal as he had an obligation to take care of the suit property and not sell it to parties without the Plaintiffs authority and consent. That the 3<sup>rd</sup> to 16<sup>th</sup> Respondent have also trespassed and encroached into suit property in violation of the Plaintiffs proprietary rights. That a survey was conducted on 6<sup>th</sup> August 2021, by the regional government surveyor, Coast Region and the survey report confirms the nature of the trespass and encroachment by the Respondents. That the Respondents are in unlawful occupation of the suit property without any express/lawful authority or without any right or license under any law. That the Respondents have no Title or genuine documents to proof ownership or interest in the suit property and are therefore trespassers. That the property had no encumbrance or dispute in regards to its ownership and possession up until now when the Respondents trespassed and unlawfully took possession of it. That as a result of the unlawful and unfounded action of the Respondents, the Applicant has been deprived of the use and enjoyment of the suit property and has suffered loss and damages which is continuing. That the Applicant issued Notice to the Respondents requiring them to immediately stop any further activities on the land, remove any structure/improvements erected on the land and vacate the suit property. That despite issuing notice and numerous demands, the Respondent are actively trespassing and erecting structures on the suit property. That the Applicant is apprehensive that unless this Honourable Court grants the orders sought the Respondent may forcefully grab the suit property and permanently interrupt the Plaintiffs quiet and peaceful possession and enjoyment of the suit property. That the Applicant shall suffer irreparable loss and damage should this Honourable Court not interfere and make appropriate orders.

This court has considered the application and submissions therein. The respondents were served but failed to attend court or file any response. 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 applicant submitted that is at all times material to this suit the registered owner of the suit property known as Land Title Number 2010/V/MN , CR No. 60865 situated in Jomvu Mikanjuni. That the Applicant appointed the 2<sup>nd</sup> Respondent as a caretaker of the suit property being Land Title Number 2010/V/MN on C.R Number 60865. That the Applicant has been in actual possession of the suit property, openly and without any interruption or claim from any party including the Respondents until the suit property was encroached and grabbed by the Respondents. I find that the applicant has established a prima facie case against the respondents and I order that the status quo be maintained pending the hearing and determination of this case. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 8<sup>TH</sup> DECEMBER 2021.**

**N.A. MATHEKA**

**JUDGE**