



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**E.L.C CASE NO 123 OF 2021**

**KAHINDI MUHAMBI GONA.....PLAINTIFF/APPLICANT**

**VERSUS**

**MBARAK SILEMANI SEHET**

**CECILIA WAUTHIRA NJOROGE**

**SA1DI HAMISI HAFFIDHA**

**MARIAM AWADH ABEL**

**ESTHER KERUBO ONGERA**

**CHIBUNGU MWARUMBA**

**EDWIN TOIZI WAFULA**

**THOMAS MDOZMBA**

**NANCY CHEPTOO**

**MBARAK SILEIMAN EDHA**

**MARY JANET KANYERIA.....DEFENDANTS/RESPONDENTS**

**LAND REGISTRAR, KILIFI.....12<sup>TH</sup> DEFENDANT**

**RULING**

The application is dated 29<sup>th</sup> June 2021 and is brought under order 51 Rules 1, 3 & 4 Civil Procedure Rules 2010 & Sections 1A, B, 3B of the Civil Procedure Act & Articles 159 & 162 of the Constitution, 2010 seeking the following orders;

1. THAT instant application be certified urgent and same be heard ex parte in the first instance;
2. THAT pending inter-partes hearing of the instant Application, this Honourable Court be pleased to issue an order of injunction restraining the 1<sup>st</sup> to the 11<sup>th</sup> Respondents herein by themselves, agents, servants and or any other person working under their directives from alienating by way of sale or dealing in other way all that Parcel of Land known as and Kilifi/Kadzozzo/Madzimbani/3435, Kilifi/Kadzozzo/Madzimbani/3436 and Kadzozzo/Madzimbani/3437.
3. THAT pending hearing of the main suit herein, this Honourable Court be pleased to issue an order of injunction restraining the 1<sup>st</sup> to the 11<sup>th</sup> Respondents herein by themselves, agents, servants and or any other person working under their directives from alienating byway of sale or dealing in other way all that Parcels of Land known as and Kilifi/Kilifi/Kadzozzo/Madzimbani/3435, Kilifi/Kadzozzo/Madzimbani/3436 and Kadzozzo/Madzimbani/3437
4. THAT this Honourable Court be pleased to issue an order of eviction against the 1<sup>st</sup> to the 11<sup>th</sup> Respondents herein by

themselves, agents, servants and or any other person working under their directives from the Parcels of Land known as Kilifi/Kadzonzo/Madzimbani/3435,

Kilifi/Kadzonzo/Madzimbani/3436 and Kilifi/Kadzonzo/Madzimbani /3437

5. THAT the area OCS oversee the eviction of the 1<sup>st</sup> to the 11<sup>th</sup> Respondents from the suit properties which rightfully belongs to the Plaintiff/Applicant.

6. Costs of the instant application be provided for and in case by borne by the Defendants/ Respondents herein.

7. Such further and/or other orders be granted as the court may deem fit and expedient.

It is based on the grounds that the Plaintiff/ Applicant herein is the legally registered proprietor of land parcels Kilifi/ Kadzonzo/ Madzimbani/ 3435, Kilifi/Kadzonzo/Madzimbani/3436 and Kilifi/ Kadzonzo/Madzimbani/3437. That the subject suit parcels of Land came about subdivided land parcel Kilifi/Kadzonzo/Madzimbani/1647. That the Respondents herein have trespassed into the properties and are unlawfully developing, cultivating and residing in the properties without any due regard to the law. That the Applicant has in numerous occasions attempted to stop the trespassers from encroaching onto his properties however his attempts have borne no fruits. That consequently, the Plaintiff/ Applicant is bound to be deprived of his interest over the subject suit Land in event the 1<sup>st</sup> to the 11<sup>th</sup> Defendants/ Respondents are not stopped by this Honourable Court. That owing to the foregoing, it is imperative for the Honourable Court to preserve the subject suit parcels of Land by way of an order of injunction restraining the Respondents from dealing in any way with the suit properties and/or their intention of settling on the Land, pending the hearing and determination of the accompanying suit herein. That the Respondents will not suffer any prejudice and or damage whatsoever, in the event the orders sought herein are issued. That consequently, the Plaintiff/ Applicant has a prima facie case against the Defendant/ Respondents. That in the circumstances, this is a fit and proper case to grant orders of temporary injunction and/ or eviction of the trespassers. That it is in the best interests of justice that the application herein be granted ex debito justitiae. That the Respondents will not suffer any prejudice and or damage whatsoever, in the event the orders sought herein are issued. That in view of the foregoing, there exist special and/or peculiar circumstances to necessitate the hearing of tire attached application on priority basis.

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 he is the legally registered proprietor of land parcels Kilifi/ Kadzonzo/ Madzimbani/ 3435, Kilifi/Kadzonzo/Madzimbani/3436 and Kilifi/ Kadzonzo/Madzimbani/3437. That the subject suit parcels of Land came about subdivided land parcel Kilifi/Kadzonzo/Madzimbani/1647. That the Respondents herein have trespassed into the properties and are unlawfully developing, cultivating and residing in the properties without any due regard to the law. The applicant seeks an injunction and eviction order against the respondents. I find that these are final orders and cannot be issued at this interlocutory stage. I find this application is not merited and I dismiss it with no orders as to costs as it was undefended.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 7<sup>TH</sup> DECEMBER 2021.**

**N.A. MATHEKA**

**JUDGE**