



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA

ELC CASE NO. 121 OF 2021

- 1. JOHNSON M'MWANGERA NJUKI**
- 2. SHADRACK KIRUKI M'LAARIA**
- 3. ELIZABETH KITZAO**
- 4. JOSHUA MITHIKA MTKIAO**
- 5. SAMUEL NTOITI M'MBOROTHI**
- 6. SOLOMON MUKABA MATIRI**
- 7. MICHAEL BENJAMIN SIMBA**
- 8. LAWI MUCHAI**
- 9. JOHN KIPKEMOI KOSKEI (Suing as Registered Trustees of
METHODIST CHURCH IN KENYA.....PLAINTIFFS**

- VERSUS -

- 1. MALUMBOLAUS**
- 2. RIO MAULID NYIRO**
- 3. PAUL WANYAMA**
- 4. KOMBO HASSAN**
- 5. TABITHA MUTHONI GATHUMBI.....DEFENDANTS**

RULING

The application is dated 28th June 2021 and is brought under Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules (2010), Sections 1A, IB, 3A and 63(e) of the Civil Procedure Act (Cap 21) Laws of Kenya seeking the following orders;

1. THAT this Honourable Court be pleased to certify this Application urgent and dispense of with the issue of service at the first instance.
2. THAT this Honourable Court be pleased to restrain the Defendants/Respondents by themselves, family, proxies, agents, servants, employees and/or otherwise, by way of injunction, from selling, offering for sell, passing out as owners encroaching, trespassing, constructing, collecting rent, fencing, cultivating, grazing, obstructing the Applicants' right of ingress and/or egress into and/or out of all those parcel known as MOMBASA/MN/BLOCK 12/54, pending the hearing and determination of this Application.

3. THAT this Honourable Court be pleased to restrain the Defendants/Respondents by themselves, family, proxies, agents, servants, employees and/or otherwise, by way of injunction from selling, offering for sale, passing out as owners encroaching, trespassing, constructing, collecting rent, fencing, cultivating, grazing, obstructing the Applicants' right of ingress and/or egress into and/or out of all that parcel known as MOMBASA/MN/BLOCK 12/54, pending the hearing and final determination of this suit.

4. THAT the Defendants/Respondents be condemned to pay costs of this

Application.

It is based on the grounds that the Plaintiff/Applicant is the bona fide registered proprietor of all that parcel known as MOMBASA/MN/BLOCK 12/54. That sometimes in or about May, 2021, the Defendants/Respondents, and without the Applicant's consent embarked on encroaching and/or trespassing of the suit parcel. That the Respondents have since evicted and/or wantonly barred the Applicant their servants, employees and/or surveyors from undertaking any development on the suit property. That Respondents actions, if allowed will subject the Applicant's estate to untold suffering and further amounts to a denial of enjoyment of user to his lawfully acquired parcel. That it is fair and just that the orders sought be granted thus equity will not suffer a wrong to be without a remedy.

The respondents submitted that they are not aware of any title deed having been issued to anyone. That they were born on the suit property and they have enjoyed quiet possession of the suit property uninterrupted for a period of more than 70 years and they have constructed a semi-permanent house which they lived in and now they are improving the semi-permanent to permanent house. That for the period of over 70 years that they have been on the site they have never seen the Plaintiff and as such the Plaintiff is a stranger to them. That they are the rightful owners of the suit land and the Plaintiff is likely to be a land grabber with intentions to deprive them their property. That the only usage of the suit property is for residential and they are not selling and or sub leasing the suit land to any other person therefore there is no danger of defeating justice if any of the suit property and the alleged right of the Plaintiff. That the Application dated 28th June 2021 is devoid of merit and the same should be dismissed with costs.

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 applicant submitted that they are the bona fide registered proprietor of all that parcel known as Mombasa/MN/Block 12/54. That sometimes in or about May, 2021, the Defendants/Respondents, and without the Applicant's consent embarked on encroaching and/or trespassing of the suit parcel. That the Respondents have since evicted and/or wantonly barred the Applicant their servants, employees and/or surveyors from undertaking any development on the suit property. I find that the applicant has established a prima facie case and 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 7TH DECEMBER, 2021

N.A. MATHEKA

JUDGE