



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC NO. 75 OF 2019**

**RUSPELLA AYUMA KODIA.....APPLICANT/PLAINTIFF**

**VERSUS**

**GRACE NAMUKURU KODIA.....RESPONDENT/DEFENDANT**

**RULING**

The application is dated 25<sup>th</sup> September 2019 and is brought under section 1A & 3A of the civil Procedure Act and Order 40 Rule 1,2 &3 of the Civil Procedure Rules seeking the following orders;

1. That this application certified as urgent and be heard exparte in the 1<sup>st</sup> instance.
2. That pending the hearing and final determination of this application, the Defendant/Respondent either by herself, through her agents, relatives, employees, servants, workers and/or any other person acting under her direction be restrained by a temporary order of injunction from alienating, depositing building materials, moving onto, trespassing, and/or in any manner whatsoever from interfering with the plaintiff/applicant's quiet and peaceful occupation, possession and use of parcel of land no. BUTSOTSO/INGOTSE/3375.
3. That pending the hearing and final determination of this suit, the Defendant/Respondent either by herself, through her agents, relatives, employees, servant, workers and/or any other person acting under his direction be restrained by a temporary order of injunction from alienating, depositing building materials, moving onto, trespassing, and/or in any manner whatsoever from interfering with the plaintiff/Applicant's quiet and peaceful occupation, possession and use of her parcel of land no. BUTSOTSO/INGOTSE/3375.
4. THAT the costs of this application be provided for.

It is based on the following principal grounds that the applicant resides on the suit parcel of land which she has established her homestead and family by virtue of having been allocated the same being her husband and the respondent is a co wife. That the respondent has moved on to the plaintiff/Applicant's land and hence deny the applicant the use of the said land without any color of right. That the respondent's actions are illegal and unjustifiable and without basis and are only calculated at promoting breach of peace. That the respondent has no registered interest in the said parcel of land and is using force to transfer the suit parcel of land into her name and disposing off the same hence denying the applicant enjoyment of her legally acquired property. That the respondent and her agents and or servants acting under her direction have engaged into wanton acts of destruction and wastage of the suit parcel of land and unless an injunction is issued the suit parcel of land will be turned to total ruins. That the balance of convenience tilts in favor of the plaintiff/applicant who is the registered proprietor of the suit parcel. That it is in the interest of justice that the orders sought be granted.

The respondent submitted that she is also a wife to JEREMIAH KOTIA NGACHE whom they have stayed with in marriage for over 50 years though no children. That the applicant and her children were shown parcel of land no BUTSOTSO/SHIKOTI/2848 by her husband who is still alive and they have refused to move there with ulterior motives of displacing her. That the sub division of the suit parcel BUTSOTSO/INGOTSE/478 was necessitated by the fact that the applicant and her children have constantly been harassing her and her husband saw the need of having the suit land subdivided in his presence to stop any conflicts in case of his demise. That the subdivision was done by her husband and was not aware that the suit parcel BUTSOTSO/INGOTSE/3375 is where her house is and where she has been staying for a long time.

This court has considered the 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 application is based on the grounds that the applicant resides on the suit parcel of land where she has established her homestead and family by virtue of having been allocated the same being her husband and the respondent is a co wife. That the respondent has moved on to the plaintiff/Applicant's land and hence deny the applicant the use of the said land without any color of right. The respondent confirms that the applicant is her co wife and states that the applicant and her children were shown parcel of land no BUTSOTSO/SHIKOTI/2848 by her husband who is still alive and they have refused to move there with ulterior motives of displacing her. That the sub division of the suit parcel BUTSOTSO/INGOTSE/478 was necessitated by the fact that the applicant and her children have constantly been harassing her. I find that this is basically a family matter and both parties reside on the suit land before the subdivision. I find that the applicant has established a prima facie case and I order that the status quo be maintained pending the hearing and determination of this case and costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18<sup>TH</sup> FEBRUARY 2020.**

**N.A. MATHEKA**

**JUDGE**