



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 27 B OF 2017

WINNIE WAMBUI KARIYU.....PLAINTIFF

VERSUS

KAGECHE BORO.....DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 14th June 2019. The following orders are sought in the application:

1. ...

2. ...

3. *THAT the Honorable Court be pleased to order that the current status quo of the suit property continues until the determination of this suit or issues further orders or directions in relation thereto for purposes of just and orderly determination of the suit.*

4. *THAT costs of this application be provided for and borne by the Defendant/Respondent.*

2. The application is supported by an affidavit sworn by the plaintiff. She deposed that despite this matter pending in court, the defendant breached her fence on 9th June 2019 and caused his animals to enter the suit property and destroyed her crops. That despite reporting to the police, no action has been taken against the defendant. She further stated that in view of this court's ruling dated 23rd November 2017 which has since been stayed, the court found that she had a prima facie case and on that basis the court should maintain the status quo. The application is further supported by another supporting affidavit and supplementary affidavit both sworn by Pauline Wanjiru both of which are along the lines of the affidavit sworn by the plaintiff.

3. The defendant opposed the application through his replying affidavit sworn on 11th July 2019. He deposed that the applicant sought to irregularly evict him from the suit property on the basis of this court's orders of 23rd November 2017 which have since been stayed. That he has remained on the suit property and has been grazing on it. He added that the applicant has no right to dispossess him before the suit is determined.

4. The application was canvassed through written submissions. The applicant argued in her submissions that she has satisfied the test for granting an interlocutory injunction and that the orders sought should therefore issue. She added that the defendant's actions of destroying the fence as well as the crops show that the defendant is not in possession since it doesn't make sense for the defendant to destroy his own fence and crops. She therefore urged the court to maintain the status quo which according to her is that she is in possession.

5. In his submissions, the defendant argued that he has been in possession of the suit property and has been grazing his animals thereon. He added that the orders of 23rd November 2017 were stayed since they were to be used to irregularly evict him. He added that the applicant has created an illegal status which she now wants the court to protect. He further stated that the court should give a priority hearing date for the suit and in the meantime maintain the true status which according to him is that he is in possession.

6. I have considered the application. The plaintiff/applicant in essence seeks an interlocutory injunction. This court has previously had occasion to consider whether or not an interlocutory injunction should issue in this matter. In a ruling delivered on 23rd November 2017, this court granted an interlocutory injunction in favour of the plaintiff. Nevertheless, for reasons stated in this court's ruling of 28th September 2018, the said order of injunction was stayed pending hearing and determination of an appeal by the defendant. If I were to grant a fresh injunction or an order that status quo be maintained, there is grave risk that I may end up issuing orders that may conflict with any orders made by the Court of Appeal in the course of determining the appeal. Equally, there is risk that such orders may run counter to the doctrine of *res judicata* as provided for under **Section 7** of the **Civil Procedure Act**.

7. Parties herein ought to get to the bottom of the main dispute by setting the suit down for hearing and determination. I will give directions in that regard upon delivery of this ruling.

8. In view of the foregoing, Notice of Motion dated 14th June 2019 is dismissed. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 12th day of February 2020.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant

Ms Wangari holding brief for Mr Waiganjo for the defendant/respondent

Court Assistants: Beatrice & Lotkomoi