



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 126 OF 2019

MARGARET ADHIAMBO NYONGESA.....PLAINTIFF/APPLICANTS

VERSUS

ROSEMARY APE MAWANG

STEPHEN WEKOTO ONG'ONG'O.....DEFENDANTS/RESPONDENTS

RULING

The application is dated 5th December 2019 and is brought under Order 40 Rule 1A of the Civil Procedure Rules and Section 1A, 3A, 63 (c) and (e) of the Civil Procedure Act seeking the following orders;

1. That this application be certified as urgent and the same be heard ex parte in the first instance.
2. That a temporary order of injunction be issued against the respondents restraining them either themselves through relatives, employees, servants, agents or any other person from claiming through themselves from alienating, selling or offering for sell, land parcel LP No. Marama/Shiatsala/614 or interfering with the plaintiff/applicant exclusive, quiet, continuous and peaceful possession, occupation and use there of pending the hearing and determination of this application.
3. That a temporary order of injunction be issued against the respondents restraining them either themselves through relatives, employees, servants, agents or any other person from claiming through themselves from alienating, selling or offering for sale, land parcel LP No. Marama/Shiatsala/614 or interfering with the plaintiff/applicant exclusive, quiet, continuous and peaceful possession, occupation and use there of pending the hearing and determination of this suit.
4. Costs of this application be provided for.

It is based on the annexed affidavit of Margaret Adhiambo Nyongesa, the plaintiff/applicant on the following principal grounds that the defendant/respondents are illegally, forcefully and without any colour of right threatening to trespass onto the plaintiff's land parcel No. LP No. Marama/Shiatsala/614 thereby threatening to change the character of the suit land which will occasion the plaintiff immeasurable loss and damage. The applicant herein is entitled under sections 7, 17 & 18 of Limitations of Actions Act Cap 22 of the Laws of Kenya to be registered as the proprietor of a portion of the suit land L.P. No. Marama/Shiatsala/614 measuring 2 acres. That it is only proper and just that the orders sought be granted in order to maintain the status quo and character of the suit property. The respondents intend, unless restrained by this honourable court to continue with their unlawful acts against the applicants which include harassing, intimidating, threatening, provoking, inciting, trailing and otherwise howsoever interfering with the applicants. That, it is in the interest of justice that the orders sought be granted and that the respondents will not be prejudiced in any way.

The respondents stated that the purported agreement dated 12th September, 1990 has not been annexed to authenticate its truth and if there is any (but which is denied) then none of the respondents witnessed and/or gave consent as outlined by the Constitution of the Republic of Kenya. That it is clear on the face of the record that as at 1990 two (2) acres could not go for Ksh. 7,500/=. That the applicant exhibit 3 does not hold any water at all as the author purports that on 10/8/1991 he witnessed 2nd instalment of Ksh. 4,000/= minus any binding agreement to that but only wakes up on 7/4/1999 to do a letter to that effect.

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.

It is based on the following principal grounds that the defendant/respondents are illegally, forcefully and without any colour of right threatening to trespass onto the plaintiff's land parcel No. LP No. Marama/Shiatsala/614 thereby threatening to change the character of the suit land which will occasion the plaintiff immeasurable loss and damage. The applicant herein is entitled under sections 7, 17 & 18 of Limitations of Actions Act Cap 22 of the Laws of Kenya to be registered as the proprietor of a portion of the suit land L.P. No. Marama/Shiatsala/614 measuring 2 acres. The applicant submitted that she has lived peacefully on the suit land for a period of over 29 years with her family making developments and cultivating it for subsistence. 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 THIS 23RD DAY OF JUNE 2020.

N.A. MATHEKA

JUDGE