



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

ELC CASE NO. 202 OF 2016

KENNETH RIUNGU M'ARERI.....PLAINTIFF

VERSUS

JOEL KABARUA M'AMBAIGU.....DEFENDANT

R U L I N G

1. The Notice of Motion dated 3rd October, 2016 seeks the following orders:-

1. spent.

2. That this Honourable Court be pleased to issue temporary orders of injunction restraining the defendant whether by himself, his agents and or any other person working under his instructions from entering, constructing and/or in any other way interfering with the plaintiffs proprietary rights over land parcel NYAMBENE/URINGUI/132 pending hearing and determination of this application inter-partes.

3. That this Honourable Court be pleased to issue temporary orders of injunction restraining the defendant whether by himself, his agents and or any other person working under his instructions from entering, constructing and/or in any other way interfering with the Plaintiffs proprietary rights over Land Parcel NYAMBENE/URINGUI/132 pending hearing and determination of this suit.

4. Costs of this application be provided for:

2. The Application is based on the grounds that:-

a. That the Plaintiff is the sole owner/proprietor of all land parcel known as NYAMBENE/URINGUI/132 measuring approximately 0.38 hectares and thereabout.

b. On/or about 17/7/2016 the defendant while in the company of hired goons by use of force and violence invaded the Plaintiffs land above and started putting on permanent houses thereon.

c. That the defendant's actions are without any justification and /or any valid claim unless restrained the plaintiff shall suffer irreplaceable loss and damages.

3. Applicant has also filed a Supporting Affidavit where he has deponed as follows:

1. That the Plaintiff is the sole owner proprietor of all land parcel known as NYAMBENE/URINGUI/132 measuring approximately 0.38 acres and thereabout, see title deed

marked KRM 1.

2. That on/or about 17/7/2016, the defendant herein while in the company of hired goons without any justification and or colours of rights and or any valid claim entered into applicants land above and by use of force and violence started erecting permanent structures thereon.

3. That on/or about 17/7/2016, Plaintiff visited the office of his lawyer on record and upon instruction, a demand notice was issued to the defendant but defendant persisted on putting on the said structures thereon.

4. That the Defendant's actions are illegal without any claim and unless restrained applicant shall suffer irreparable loss and damages.

4. When the matter came up for interpartes hearing on 01:03:17, the Court confirmed that Defendant had been served but was absent.

The application is hence unopposed.

5. The prayer for an injunction is an equitable and discretionary remedy. The Court will hence determine whether the orders can be granted even if the application is unopposed.

A look at annexure KRM1, a title deed reveals that the land in question is registered in the name of the applicant. If the defendant has invaded the land, this Court would not be in a position to compute the damages that would be occasioned by the alleged invasion.

In the circumstances, I find that the applicant has met the first two principles set out in the Case of ***Giella Versus Cassman Brown & Co Ltd. [1973] EA 358.*** (Prima facie case and that damages may not be adequate compensation for any harm done).

I allow the application in terms of prayer 3 to the effect that a temporary injunction is hereby issued restraining defendant whether by himself, his agents and or any other person working under his instructions from entering , constructing and/or in any other way interfering with the Plaintiffs proprietary rights over land parcel NYAMBENE/URINGUI/132 pending hearing and determination of this application inter-partes. BUT FOR A PERIOD OF 6 (SIX) MONTHS.

DELIVERED IN OPEN COURT AT MERU THIS 14TH DAY OF MARCH, 2017 IN THE PRESENCE OF: -

CA: Janet

Mbaikiata h/b for Kiogora

Mugambi for Plaintiff

Plaintiff present

L.N MBUGUA

JUDGE