



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

E.L.C. CASE NO. 29 OF 2017

ROBERT MUNENE MURIUNGI.....PLAINTIFF

VERSUS

KINYUA MBAYA.....DEFENDANT

RULING

1. The Notice of Motion dated 2nd February, 2017 seeks the following orders:-

1. Spent.

2. **THAT** the pending inter-parte hearing of the application, a temporary injunction be issued restraining the defendant /respondent, his family members, representatives, employees, servants, agents and/or anybody else acting or claiming for, through or on his behalf or acting at his behest, direction or instructions, from entering into, trespassing onto, cultivating on, effecting any form of construction or developments on, or whatsoever interfering with the Plaintiff's/ applicant's exclusive, uninterrupted and undisturbed actual possession, user and enjoyment of all that plot No. 1019 under **PDP NO. ISL 117/16/374**, measuring about **50 by 100 feet**, situated in Kambi ya juu area near the new Mater hospital within Isiolo County.

3. **THAT** pending hearing and determination of the suit or until further Court orders, a temporary injunction be issued restraining the defendant /respondent , his family members, representatives, employees, servants, agents and/ or anybody else acting or claiming for , through or on his behalf or acting at his behest, direction or instruction or developments on, or whatsoever interfering with the plaintiff's/applicant's exclusive, uninterrupted and undisturbed actual possession, user and enjoyment of all that plot No. 1019 under **PDP NO. ISL. 117/16/374**, measuring about **50 by 100 feet**, situated in Kambi ya juu are near the new Mater Hospital within Isiolo County.

4. **THAT** costs of the application be provided for.

2. The grounds in support of the application are:-

1. **THAT** the plaintiff /applicant is the sole registered owner of the suit plot which he is in possession of:

2. **THAT** on or about 31.01.2017, the defendant/respondent forcibly stormed onto the said plot, planted additional euphorbia shrubs along the boundaries delineating the said plot and obstinately threatened to evict the Plaintiff/applicant from his afore-said plot so that he can utilize the same.

3. **THAT** the defendant/respondent has no protectable interest or right in the suit plot.

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

(1) **THAT** the Plaintiff is registered owner of plot **NO. 1019** under PDP **No. ISL. 117/16/374**, measuring about **50 by 100 feet**, situated in Kambi ya juu area near the new Mater Hospital within Isiolo County. (Annexed as **“RMMI”** is a bundle of his ownership documents, map & payment receipts).

(2) **THAT** he bought the said plot from Martin Kin'gori Ndegwa at 650,000, vide an agreement dated 12:08:2016, a copy of which is annexed hereto and marked **“RMM2”**.

(3) **THAT** he has been in exclusive possession and utility of his said plot since 12:08:2016 until now.

(4) **THAT** before the Plaintiff purchased the afore-said plot, he conducted due diligence by visiting the lands office at Isiolo and the suit plot on the ground. The afore-said due diligence exercise certainly confirmed to him that Martin King'ori Ndegwa was the true owner of the said plot which had no dispute , and that the said Martin King'ori Ndegwa was in actual possession, utility and enjoyment of the same.

(5) **THAT** on or about 31:01:2017, the defendant/respondent forcibly stormed into his said plot and planted additional euphorbia shrubs along the boundaries delineating the said plot and publicly vowed to evict the applicant there-from and take possession and utility of the same, yet he has no form or right or interest therein. (Annexed hereto and marked **“RMM3”**are photographs to that effect).

(6) **THAT** he promptly took possession of the applicant's plot upon purchase and so, the defendant/respondent is a trespasser thereon, since he has no justifiable or protectable proprietary right or interest therein.

(7) **THAT** the defendant's/respondent's afore-said unlawful actions and intentions contravene my constitutional rights to own and enjoy property as enshrined and subsumed under **Article 40 of the Constitution of Kenya**, and are geared towards grabbing his afore-said plot and enriching the defendant/respondent unjustly at applicant's expense, and to his utter detriment.

(8) **THAT** the defendant/respondent is a ruthless person and unless urgently restrained , he shall certainly unlawfully grab applicant's plot and cause him to suffer irreparable harm, loss and damage.

4. Pursuant to the Affidavit of Service filed in Court on 13:02:17, the Court confirmed that service upon the Respondent had been effected.

5. Upon perusal of the record particularly the annexures to the application, it is evident that applicant has a plausible claim to the property in question.

6. I find that applicant has met the first two principles set out in the case of *Giella Versus Cassman Brown & Co Ltd. [1973] EA 358*. Whereby a prima facie case has been established and secondly any damages that may occur may not be adequately compensated by way of damages. The Court need not interrogate the 3rd criteria.

7. The application is allowed in terms of prayer 3 **BUT FOR A PERIOD OF 6 (SIX) MONTHS.**

8. Costs in the cause.

**SIGNED, AND DELIVERED IN OPEN COURT AT MERU THIS 8TH DAY OF MARCH, 2017
IN THE PRESENCE OF:-**

CA: Janet

Carl Peters Mbaabu for the Plaintiff

L.N MBUGUA

JUDGE