



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 61 OF 2019

KAIMOSI FRIENDS UNIVERSITY COLLEGE.....PLAINTIFF/RESPONDENT

VERSUS

EAST AFRICA YEARLY MEETING F FRIENDS EPHRAIM KONZOLO... DEFENDANTS/APPLICANTS

AND

KAIMOSI TEACHERS TRAINING COLLEGE.....DEFENDANT/INTERESTED PARTY

RULING

The application is dated 22nd May 2020 and is brought under Article 50(1) and 159(2)(d) of the Constitution of Kenya, Order 40 Rule 1,2,3,4 & 8 of the Civil Procedure Rules and Section 1A & B, 3, 3A, 63 (c) and (e) of the Civil Procedure Act, section 2,3 &4 of the Judicature Act and section 13 of the Environment and Land Court 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 pending inter parties hearing an interim order of injunction be issued against the respondent its workers, employees, members, representatives, agents or any other person who may be acting on their behalf from accessing, remaining on, digging, committing acts of waste thereon, or undertaking any farming activities, cutting down trees or other vegetation, utilizing in any manner the whole or any portion of land parcel No. 1087/2 or interfering with the applicants' occupation and use or possession.
3. The interim orders of injunction once issued to remain in force pending the hearing and determination of this suit.
4. Copies of the order once granted be served on the OCS Serem Police Station and the officer in charge Administration Police Hamisi Sub County for necessary assistance and security if so required to ensure compliance with the orders.
5. Costs of this application be provided for.

It is based on the annexed affidavit of Ephraim Konzolo and on the following principal grounds that the respondent has forcefully invaded the suit land backed by security men and has committed trespass. That the suit land is the property of the 1st applicant and its registration in the name of the respondent was reversible as the purpose was to establish a University in Vihiga County and this was done on an adjacent parcel of land known as 1087/3 more than 100 acres donated by the 1st applicant. The 1st defendant has been in possession of the suit land for more than a decade. By invading the suit land the respondent is creating a confrontation between the church and the university students.

The respondents opposed the application and stated that the defendants willingly, freely and in good faith donated the suit property to the respondent. The suit land was registered in the plaintiff's name. upon the donation and subsequent registration of the suit land in the respondent's name the suit land ceased being under the management of the applicant's and became government land under the respondent's management. The respondent is now the absolute and indefeasible owner of the suit property. The respondent has developed the land and has established permanent structures.

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 respondent has forcefully trespass onto the applicants' land parcel No. 1087/2. It is not disputed that the respondent is the absolute registered proprietor of the suit property. It is also not disputed that the applicants donated the same to the respondent to establish a University. The balance of convenience does not shift in favour of the applicants. I find that the applicants have failed to establish a prima facie case against the plaintiff. This application has no merit and I dismiss the same and costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 29TH DAY OF JULY 2020.

N.A. MATHEKA

JUDGE