



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 81 OF 2016**

**GEORGE KIBIRU MUCHAI .....1<sup>ST</sup> APPLICANT**

**LOISE WANJIRU NJOROGE .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**JOHN KINYANJUI aka IKERE.....1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR NAKURU .....2<sup>ND</sup> RESPONDENT**

**RULING**

***(Application for injunction; plaintiffs being owners of suit land; defendant interfering with the land; no response to application by defendant; prima facie case established by plaintiffs; application for injunction allowed).***

1. This suit was commenced by way of plaint filed on 10 March 2016. Together with the plaint, the plaintiffs did file an application for injunction under the provisions of Order 40 rules 1 and 2 of the Civil Procedure Rules. Despite being served, the defendants are yet to enter appearance and they did not reply to the application. The only material that I have is therefore that supplied by the plaintiffs.

2. The plaintiffs are husband and wife. They have averred that they purchased the land parcel Gilgil/Karunga Block 10/32 (Gitangu) (the suit land) from one Geoffrey Karanja Njuiri vide an agreement for sale dated 17 July 2014. Thereafter the land was transferred to them and they became the registered proprietors. In the year 2015, the 1<sup>st</sup> respondent came to the 1<sup>st</sup> plaintiff, alleging that he had a partnership with Mr. Njuiri, the person who sold the suit land to the plaintiffs. The 1<sup>st</sup> plaintiff contacted Mr. Njuiri who informed him that there were no such arrangements. On 8 March 2016, it is deposed that the 1<sup>st</sup> defendant illegally trespassed into the suit land and started surveying and subdividing it and threatened to register a portion thereof into his name. It is the view of the plaintiffs that unless restrained, there will be further interference.

3. I have considered the matter. This is an application for injunction. The principles for the grant of the same were set out in the case of ***Giella vs Cassman Brown (1973) EA 358***. For one to succeed in an application of this nature, one needs to demonstrate a prima facie case with a probability of success; demonstrate irreparable loss; and if in doubt the court will decide the matter on a balance of convenience.

4. I have seen a copy of the title deed showing that the plaintiffs are the registered proprietors of the suit

land. Being proprietors, they are entitled to exclusive possession of their property. The 1<sup>st</sup> defendant has not given any reason as to why he is entitled to be in the suit land. I am therefore of the view that the plaintiff has established a prima facie case with a probability of success. Unless restrained, the 1<sup>st</sup> defendant will no doubt continue interfering with their quiet possession.

5. I therefore allow this application. I order the 1<sup>st</sup> defendant to keep away from the suit land and not to interfere with the plaintiffs' occupation of the same until this suit is determined. I further order the 2<sup>nd</sup> defendant not to register any subdivision of the suit land unless with the authority of the plaintiffs.

6. The plaintiffs shall have costs of this application as against the 1<sup>st</sup> defendant.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 12<sup>th</sup> day of May, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

No appearance on part of M/s George Kimani & Co. for applicant.

No appearance on part of respondent.

Court Assistant: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**