

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

ENVIRONMENT AND LAND CASE NO. 245 OF 2013

MARY IKABUKONYI JAKAITPLAINTIFF

VERSUS

FRANCIS M. MUMANI]

EMILY NEKESA NYONGESA]

MUMIAS SUGAR COMPANY LIMITED].....DEFENDANTS

RULING

1. The Applicant is seeking temporary orders of injunction restraining payment of cane proceeds to the 2nd Defendant pending the hearing and determination of this suit. The application is premised on the grounds on the face of it and on the supporting affidavit sworn by the Applicant.
2. The Applicant depones that she leased the cane from the 1st Defendant for three harvests at a consideration of Kshs. 40,000/=. She tendered the cane but the 1st Defendant cashed the money after the cane was harvested. Later the 1st Defendant leased the said cane to the 2nd Defendant. The cane has been harvested by the 3rd Defendant and is likely to pay the 1st and 2nd Defendant the proceeds, hence the need to obtain an order stopping them.
3. The application is opposed and the 1st & 2nd Defendants have each sworn a replying affidavit. The 1st Defendant denies entering into any agreement of lease with the Applicant. He also deponed that the application offends the provisions of the Civil Procedure Rules and the Statutory Declarations Act – an issue raised by the 2nd Defendant too. The 2nd Defendant denies entering into a secret agreement with the 3rd Defendant. Neither that she wrote to the 3rd Defendant to delete the 1st Defendants name.
4. Both counsels presented oral submissions to highlight the basis of their clients claims. The 1st & 2nd Defendants relied on the case of Bungoma **Election Petition No. 3 of 2013, Musikari N. Kombo Vs. Moses M. Wetangula & 2 others** to support the point of the Applicants documents not complying with the requirements of Section 6 of the Statutory Declarations Act.
5. I have perused the pleadings filed and considered the oral submissions presented. The Applicant's supporting affidavit does not contain any annexures. At paragraph 4, she refers to entering an agreement of lease with the 1st Defendant on 5.5.2011 but failed to annex the said agreement to the affidavit.
6. However I have taken it upon myself and looked at what is referred to as the letter and the cane lease agreement contained in the list of documents filed alongside the plaint. The lease agreement did not specify the number of harvests the Applicant could undertake, while the letter refers to three harvests. The Applicant aver this was the 1st ratoon (2nd harvest) and it is her who developed the cane. There was no mention of how much she used to develop the cane neither any documentation in terms of receipt of purchase of any farm inputs.
7. In any event this is a liquidated claim. If the money is paid out to the Defendants, she can always be compensated in damages at the end of the cane. She has not pleaded that the 1st and 2nd defendants lack capacity to refund the money In the even her suit is successful. Finally her prayers were limited to stopping payment of cane proceeds being made to the 1st & 2nd defendants. She did not pray for an

order stopping their continuous use of the disputed land (field No. 150 on plot number South Mateka/736) while the case is pending. I find therefore that the Applicant claim is one that can be compensated by way of damages. Her application fails the test set out in Giella Vs. Cass Man Brown for granting injunctions. The application is therefore dismissed with costs in the cause.

DATED, SIGNED and DELIVERED in open court this 11th day of Feb 2014.

A. OMOLLO

JUDGE.