

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
LAND AND ENVIRONMENT CASE NO. 270 OF 2013

REUBEN OMACHO MASINDEPLAINTIFF/APPLICANT

VERSUS

CATHERINE NJAMBI DEFENDANT/RESPONDENT

RULING

On 19th September 2013, the plaintiff filed an application dated 17/9/2013 for restraining orders. It was filed under certificate of urgency. The court ordered that the same be served for inter-partes hearing. Thereafter, the registry fixed it for hearing on 26/11/13.

On that 26/11/2013, the plaintiff did not attend court. The defendant was in court. The application was therefore dismissed for non attendance, and the plaintiff ordered to pay the defendant costs of 600/=.

On 6/12/2013, the plaintiff filed another application seeking restraining orders as well as reinstatement of the dismissed application. This later application was fixed for hearing on 25/2/14. On that hearing date, the arguments tendered by the parties covered both applications.

Having considered the position taken on both sides, I find that there is no objection to the request for reinstating the dismissed application dated 17/9/2013. The same is hereby reinstated. The plaintiff will however pay the defendant the costs of 600/= earlier awarded by the court.

With regard to the reinstated application dated 17/9/2013, the parties herein agree that none of them want to evict the other. The plaintiff has also not satisfied the parameters for grant of interlocutory injunctions as enunciated in the case of **GIELLA –VS- CASSMAN BROWN LTD. [1973] EA 358**. He has not demonstrated especially, that he will suffer irreparable loss if the orders sought are not granted.

The above notwithstanding, since the parties know the status quo as at the time this present suit was filed, I am of the view that it serves the interest of justice that status quo should continue to prevail upto the hearing of the suit. I find no reason to disturb the same.

Consequently, I order in the interests of justice that the status quo subsisting as at 19/9/13 when this suit was filed be maintained till hearing and determination of the suit. If however, the plaintiff will not have paid to the defendant the Kshs.600/= costs awarded above within 30 days from today, the orders of maintenance of status quo herein granted will automatically lapse. No order as to costs.

Dated and delivered at Kakamega this 5th day of June, 2014

George Dulu

JUDGE