

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

E.L.C NO 215 of 2013

LUKA CHEPTUM BOMETT.....PLAINTIFF

VERSUS

HENRY KIPYEGON NDUATI.....DEFENDANT

RULING

By Notice of Motion dated 26th February 2013 the plaintiff, Luka Cheptum Bomett, brought this application against the defendant Henry Kipyegon Nduati seeking, among other orders, a temporary injunction to restrain the Defendant/Respondent by himself, his servants and/or agents from trespassing alienating, disposing off, wasting, dealing with or in any way interfering with Land parcel No.04528 within Nessuit settlement scheme pending the hearing and determination of this application interparties.

The application was unopposed. The respondent was duly served with the application and hearing notice but neither filed a response nor appeared for the hearing of the application.

The applicant relied on the grounds deponed in his supporting affidavit sworn on 26th February, 2013 that he is a bonafide purchaser with full rights of plot No.04528 Nessuit settlement scheme measuring approximately 5 acres, having bought the suit land pursuant to a sale agreement signed between himself and the respondent on 10th September, 2008: That upon completion of full payment of the suit property the defendant handed over to him the allotment letter, after which he took possession, planted crops, trees and put up developments on the suit land: That the Defendant has now trespassed onto the suit land, chased him away with a panga/machete resulting in the defendant's arrest and being charged in court.

The case of **Giella Vs Cassman Brown (1973) E.A 358**, lays down the principles for granting an interlocutory injunction relief. The court will consider whether:

1. The applicant has shown that he has a prima facie case with a probability of success.
2. Damages will be an adequate remedy and
3. On the balance of convenience, should the court be in doubt it will determine the matter on a balance of convenience.

The applicant has exhibited a copy of a sale agreement between himself and the defendant, a copy of the allotment letter in the defendant's name and proof of payment of the full purchase price to the defendant. As this is uncontroverted, I am satisfied that the Applicant has demonstrated that he has a prima facie case with a probability of success. The applicant in prayer 3 has sought a permanent injunction. This I cannot give at an interlocutory stage as such an order will finalize the suit. Instead, I hereby order that pending the hearing and determination of this suit, there be a temporary injunction restraining the Defendant/Respondent by himself, his servants and /or agents from trespassing, wasting, dealing or in any way interfering with the plaintiffs/Applicant's Land known as plot No.04528 within Nessuit Settlement Scheme.

No order is granted as to costs since the Defendant did not enter appearance.

Dated, signed and delivered at Nakuru this 5th day of July 2013.

L N WAITHAKA

JUDGE