



**REPUBLIC OF KENYA**

**High Court at Meru**

**Civil Suit 120 of 2012**

**IN THE MATTER OF LIMITATION OF ACTIONS ACT  
CAP.22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF ADVERSE POSSESSION**

**JOSEPH MUTHOMI RIUNGU.....PLAINTIFF**

**VERSUS**

**STEPHEN MWITI M'MURUNGI.....DEFENDANT**

**R U L I N G**

The plaintiff/applicant filed suit against the defendant/respondent seeking an order that he be registered as proprietor of a portion of 0.7 acres out of L. R. ABOGETA/L. KITHANGARI/1535 by virtue of adverse possession. Contemporaneously with filing of the (O.S) the applicant/plaintiff filed a Notice of Motion seeking an order of inhibition restraining any dealings with the register of L. R.

Abogeta/L.Kithangari/1535 pending determination of this suit. The applicant further sought an order of injunction restraining the defendant, his agents or servants from interfering, evicting the plaintiff or otherwise putting to waste the plaintiff's properties over a portion of 0.7 acres of L. R. Abogeta/L.KITHANGARI/1535 pending hearing and determination of this suit.

The grounds in support of the application are stated on the face of the application. The application is supported by annexed affidavit of the applicant and annexures attached thereto. The application is opposed. The respondent swore a replying affidavit in opposition to the application.

The brief facts of this suit are that in the year 1998 and 1999 the defendant sold to the plaintiff 0.7 acres out of ABOGETA/L.KITHANGARI/921. The plaintiff took possession of the suit property immediately and carried out developments therein. The plaintiff has since then been in exclusive, open and uninterrupted occupation of the said portion for a period of over 12 years.

The applicant is apprehensive if orders sought are not granted the defendant may alienate the land and defeat applicant's claim. When the matter came up for hearing, this court heard oral submissions by Mr. Muthamia, learned Advocate for the applicant and the respondent. This court has carefully considered the said submissions. It has also read the pleadings filed by the parties herein in support of their respective opposing positions.

The issue for determination by this court is whether the applicant had laid sufficient basis for this court to

grant inhibition and injunction orders pending hearing and determination of this suit.

The test for granting an injunction application is well settled in the celebrated case of **GIELLA – VS- CASSMAN BROWN & CO. LTD(1973) EA 358** in which Court of Appeal held:-

***1.An applicant must show a prima facie case with a probability of success;***

***2.An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury;***

***3.When the court is in doubt, it will decide the application on the balance of convenience.***

In the instant case both parties are in an agreement that the applicant either purchased or leased a portion of land from the defendant. The applicant has attached agreement of sale to which the defendant admitted having signed but contends he was signing a lease agreement. There is no dispute that the applicant has been in occupation of the disputed portion of 0.7 acres for a period of now 14 years. The respondent has not denied that the applicant has extensively developed the suit land. The defendant contend the applicant has since been on his land without his permission since the lease period had expired. That if the land had been leased, the parties did not obtain consent of the Land Control Board and the lease agreement(if any) as contended by the defendant became null and void 6 months from 1998 and 1999 respectively resulting to applicant basing his claim on adverse possession. In view of the admitted facts and the continuous occupation of the suit land, by applicant I find that the applicant has shown that he has a prima facie case with probability of success. That the applicant has been in occupation of suit land and has developments therein if injunction is not granted he would stand to suffer irreparable loss that might not be adequately compensated by way of damages.

In this application, the court is called upon to invoke the oxygen principles which are aimed at enabling litigants to obtain justice affordably, expeditiously and proportionately in addition to the traditional principles often cited in **GIELLA-V-CASSMAN BROWN & CO. LTD(1973) E.A. 358**(Supra). The oxygen principle in a nutshell obliges the courts to do substantive justice and avoid doing injustice even when an applicant has failed to meet the tests laid down in **GIELLA – V- CASSMAN BROWN & CO. LTD** (supra).

On the applicant's application for orders of inhibition the applicant has demonstrated that he has rights or interest over suit land which ought to be protected pending hearing and determination of this suit. The applicant's occupation of the suit land for a period of over 12 years is sufficient justification for the applicant to seek orders of inhibition.

The upshot of the matter is that this application is allowed and I proceed to make the following orders:-

***1. An order of inhibition restraining any dealings with the registrar of L. R. ABOGETA/L.KITHANGARI/1535 be and is hereby granted pending hearing and determination of this suit.***

***2.A copy of the inhibition under the seal of the court with particulars of the land, affected be sent to the registrar, for registration in the appropriate register.***

***3.An order of injunction restraining the defendant, his agents, or servants from interfering and, evicting the plaintiff/applicant or otherwise putting to waste the plaintiff/applicant's properties over a portion of 0.7 acres of L. R. ABOGETA/L.KITHANGARI/1535 be and is hereby granted pending hearing and determination of this suit.***

***4.Costs of the application to the applicant.***

DATED, SIGNED AND DELIVERED AT MERU THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2012

**J. A. MAKAU**  
**JUDGE**

*Delivered in open court in presence of:*

1. Mr. Muthamia for the applicant (absent)

2. Respondent in person (absent)

**J. A. MAKAU**  
**JUDGE**