



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC PETITION CASE NO. 1 OF 2020**

**MIRIAM NYANGARA MURIMBI....PETITIONER/APPLICANT**

**VERSUS**

**THE NATIONAL LAND COMMISSION OF KENYA**

**PETER MUTHINI WAMBUA**

**CHIEF LAND REGISTRAR .....RESPONDENTS**

**RULING**

The application is dated 7<sup>th</sup> August 2020 and is brought under Rule 3 of the High Court (Practice and Procedure Rules) seeking the following orders;

1. That service of this application be dispensed with in the first instance.
2. That the application dated 4<sup>th</sup> August, 2020 be certified as urgent and the same be heard and determined during the current High Court vacation.
3. That it is imminent that unless the application is heard on a priority basis, the same would be rendered nugatory by the time the honourable court resumes its sitting after the said vacation.
4. That the petitioner/applicant stands to suffer great detriment in the foregoing event.

It is grounded upon the annexed affidavit of Richard Mutiso and upon grounds that the petitioner/applicant is the registered owner of the land parcel number Kakamega/Sergoit/P.145 and the resultant subdivision. That on 7<sup>th</sup> February, 2019 vide NLC/HLI/164/20 the 1<sup>st</sup> respondent without any colour of right recommended to the Chief Land Registrar, the 3<sup>rd</sup> respondent herein for cancellation of the petitioner's/applicant's title deed and further recommended that the subject land be transferred to the 2<sup>nd</sup> respondent. That the 1<sup>st</sup> respondent has lodged a restriction on the petitioner's/applicant's parcel of land and/or the resultant subdivisions. That the petitioner is aggrieved with the 1<sup>st</sup> respondent's decision and has filed a petition and an application dated 4<sup>th</sup> August, 2020 seeking inter alia orders of temporary injunction against the respondents from cancelling and/or transferring and/or interfering with the petitioner's/applicant's title to the parcel of land known as Kakamega/Sergoit/P. 145 pending the hearing and determination of the application and the petition. That it is in the interest of justice that this application be allowed in favour of the petitioner/applicant. That no prejudice will be suffered by any party should the orders sought issue.

This court has considered the submissions therein. The application was not opposed. The application being one that seeks injunctions, has to be considered within the principles set out in the case of *Giella vs Cassman Brown & Co Ltd* 1973 E.A 358 and which are:-

1. The applicant must show a prima facie case with a probability of success at the trial
2. The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,
3. If in doubt, the Court will decide the application on a balance of convenience.

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a Court of equity.

The application is based on the principal grounds that the petitioner/applicant is the registered owner of the land parcel number Kakamega/Sergoit/P.145 and the resultant subdivision. That on 7<sup>th</sup> February, 2019 vide NLC/HLI/164/20 the 1<sup>st</sup> respondent without any colour of right recommended to the Chief Land Registrar, the 3<sup>rd</sup> respondent herein for cancellation of the petitioner's/applicant's title deed and further recommended that the subject land be transferred to the 2<sup>nd</sup> respondent.

I find that the applicant has failed to establish that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages. I find this application is not merited and I dismiss it with no orders as to costs as the same was undefended.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24<sup>TH</sup> NOVEMBER 2020.**

**N.A. MATHEKA**

**JUDGE**