



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC PETITION NO. 6 OF 2018**

**MUNYAO SILA**

**LINDA CHEPKORIR RUTO.....PETITIONERS**

**VERSUS**

**COUNTY GOVERNMENT OF KAKAMEGA**

**KAKAMEGA COUNTY DEV. CONTROL**

**& DISPUTE RESOLUTION COMMITTEE.....RESPONDENTS**

**RULING**

The application is dated 9<sup>th</sup> November 2018 and is brought under rules 13, 19, 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 seeking the following orders;

1. That this honourable court be pleased to certify this application as urgent and be heard ex-parte in the first instance.
2. That pending the hearing and determination of this application inter parties, this honourable court do issue conservatory orders stopping the respondents from any further developments or changing the status quo maintaining in the land parcel Kakamega/Municipality Block III/7.
3. That pending the hearing and determination of this application inter parties, this honourable court do issue conservatory orders freezing the payments of land rates and land rent to the respondents by the petitioners.
4. That at the inter parties hearing of this application, this honourable court be pleased to grant the prayers 2, 3 and 4 above, mutatis mutandis, until this petition is heard and determined.

It is based upon the following grounds that, the respondents have moved into the petitioners' property, Kakamega Municipality Block III/7 and made developments. That unless conservatory orders are issued, additional developments may be made altering the status quo. That given the fact that the respondents have already moved into the petitioners' land, the petitioners are apprehensive that they may move to interfere with their title documents as well. That the respondents have forcefully taken possession of the suit property and the petitioners are unable to derive any benefit from it and it will be unfair for the respondents to at the same time demand payment of land rents and rates.

This court has carefully considered the submissions and the annexures therein. The principals governing the grant of interlocutory orders are clear. As stated in the case of *Giella vs. Cassman Brown* (1973) EA 358.

*“The conditions of granting an injunction are now, I think well settled in East Africa. First an applicant must show a prima facie case with a probability of success. Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”*

Furthermore, as elaborated in the case of *Mrao Ltd vs. First American Bank of Kenya Ltd & 2 others* (2003) Hon Bosire J.A. held that:

*“So what is a prima facie case? I would say that it is a case in which on the material presented to the court or tribunal properly*

*directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter .....*”

Further he goes on to state that “..... a *prime facie* case is more than an arguable case, it is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

In this case, the respondents were served but failed to attend court or file any grounds of opposition. The applicants have annexed a certificate of lease and an official search (MS 1 and 2) of the said suit land to prove ownership. They state that the respondents have moved into the petitioners’ property, Kakamega Municipality Block III/7 and made developments. This court can safely conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the respondents. I find this application has merit and I grant the following orders;

1. That pending the hearing and determination of this petition conservatory orders do issue stopping the respondents from any further developments or changing the status quo maintaining in the land parcel Kakamega/Municipality Block III/7.

2. That pending the hearing and determination of this petition, conservatory orders do issue freezing the payments of land rates and land rent to the respondents by the petitioners.

3. Costs to be in the cause.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28<sup>TH</sup> DAY OF FEBRUARY 2019.**

**N.A. MATHEKA**

**JUDGE**