



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC SUIT NO. 95 OF 2018 (O.S)

**IN THE MATTER OF: LAND PARCEL NO. 11864 (ORIGINAL
NO. 11703/137) SECTION 1 MAINLAND NORTH (CR NO. 1704/13)**

**IN THE MATTER OF: AN APPLICATION FOR
DECLARATION THAT THE PLAINTIFF/APPLICANT HAS
OBTAINED OWNERSHIP OF NOUGH DECIMAL NOUGHT
THREE SEVEN FIVE (0.0375) HECTARES OF THE ABOVE SAID
LAND BY WAY OF ADVERSE POSSESSION**

BETWEEN

MICHAEL SAFARI NGARI.....PLAINTIFF/APPLICANT

-VERSUS-

SHEIKH NUREIN MUHIDIN.....DEFENDANT/RESPONDENT

RULING

1. For determination is the notice of motion dated 20th April 2018 brought under the provisions of Order 40 seeking the following reliefs:

1. Spent

2. Spent

3. That this Honourable Court be pleased to issue temporary injunction restraining the Defendant/Respondent and/or his agents and/or employees and/or servants and/or relatives and/or any other person(s) acting on the Defendant's behalf from invading and/or trespassing and/or demolishing and/or selling and/or constructing a structure(s) on the suit premises, being plot No. 11864 (Original No. 11703/137) Section 1 Mainland North, CR NO. 1704/13 situate at Bamburi, Kidajani/Jishikilie within Mombasa County and/or dealing with the suit premises in any manner, whatsoever detrimental to the rights and interest of the Plaintiff/Applicant herein, pending the hearing and determination of this suit.

4. That costs of this application be provided for.

2. The application is opposed by the grounds of opposition dated 19th June 2018 and filed on the same day. The defendant/Respondent lists the following in the grounds:

1. That the Application is bad in law and is malicious on the face as the annexed documents to wit; - the photos, the power bill receipts, Water Bill Receipts do not specify the contested parcel of land hence they lack basis.

2. That the deponent of the supporting affidavit in support of the originating summons is not being candid enough as the

photos attached don't bear the date when the structure was built.

3. That the Respondent purchased the suit property being plot No. CR 32279 when it was free from squatters and therefore the plaintiff wants to reap where he has not sown.

4. That the application is fatally defective and the orders sought are untenable.

3. The principles to be proved under injunction applications are well established in Giella vs Cassman Brown case. The applicant annexed in his affidavit in support of the motion photos of a house which he says is on the plot. He also annexed a demand letter dated 19th March 2018 written to him by the defendant's advocate seeking for vacant possession. Although the defendant states in his grounds that the photos do not indicate the date on which they were taken. His own demand letter confirms that the applicant was in possession at the time of filing of the suit.

4. The applicant also states that he has been in possession for some time. To demonstrate this, he annexed utility bills issued to him

sometime in 2009. The defendant did not rebut this evidence as the grounds of opposition cannot answer to this facts. The applicant has thus demonstrated that he has a prima facie case with a probability of succeeding. Secondly the balance of convenience tilts in his favour as the interest of justice favour maintenance of the prevailing status quo i.e. the applicant retaining possession until the suit is heard and determined.

5. In light of the facts pleaded by way of affidavit and not rebutted, I find the application as merited and hereby do confirm the orders of injunction earlier given by allowing prayer 3 of the motion. The costs of the application are ordered in the cause.

Dated, signed & delivered at Mombasa this 22nd February 2019

A. OMOLLO

JUDGE