



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 40 OF 2019**

**CATHERINE WAITHERA MANDE..... PLAINTIFF**

**VERSUS**

**JOSPHAT KARANJA MWAURA.....DEFENDANT**

**RULING**

1. By Notice of Motion dated 3<sup>rd</sup> April 2019, the plaintiff sought an injunction to restrain the defendant by himself, his agents or servants from entering, cultivating, planting or in any way interfering with LR No. Dundori/Mugwathi Block 2/195 (the suit property) until further order of the court or with the consent of the plaintiff. The application is supported by an affidavit sworn by the plaintiff. Though served, the defendant neither filed a response nor attended court at a hearing of the application. Counsel for the applicant therefore urged the court to allow the application, it being unopposed.

2. The applicant's case is that she is the administrator of the estate of her late husband who owned the property. That she obtained confirmation of grant in respect of the deceased's estate and thus became registered proprietor of the suit property. That the defendant entered the suit property and ploughed it sometime in the years 2017 and 2018 and is preparing to plant thereon without her authority. She thus urged the court to grant her the orders sought.

3. I have considered the application and the supporting affidavit. The applicant seeks an interlocutory injunction. She must therefore satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. She must establish a *prima facie* case with a probability of success. Even if a *prima facie* case is established, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to the answers to the above two tests then the court will determine the matter on a balance of convenience. As was recently held by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, all the three **Giella** conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration.

4. The application is unopposed and the applicant's allegations remain uncontested. All she has to do in the circumstances is to establish a *prima facie* case and meet the other preconditions for granting an interlocutory injunction. A *prima facie* case is a case which on the material presented to the court a 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. See **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR**.

5. The respondent has not contested the material placed before this court. I am therefore satisfied that the applicant has established that she is the owner of the suit property and that the respondent entered the suit property and ploughed it sometime in the years 2017 and 2018 and is intent on planting thereon without her authority. She has established a *prima facie* case. I do not think that damages can be an adequate compensation to her. An injunction should thus issue to protect her from the threat posed by the respondent.

6. In the end, I grant an injunction restraining the defendant by himself, his agents or servants from entering, cultivating, planting or in any way interfering with LR No. Dundori/Mugwathi Block 2/195 pending further orders of the court. The applicant shall have costs of the application.

**Dated, signed and delivered in open court at Nakuru this 29<sup>th</sup> day of May 2019.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Kimatta for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistants: Beatrice & Lotkomoi