



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 44 OF 2019 (O.S.)

WILLIAM NGETHE WAWERU.....1ST PLAINTIFF
SAMUEL NJOROGE MUCHANE.....2ND PLAINTIFF
TITUS MWANGI KARANJA.....3RD PLAINTIFF
MARGARET NYAMBURA KURIA.....4TH PLAINTIFF
JOHN MUNGE GIKONYO.....5TH PLAINTIFF
JOSEPH MWANGI KIRARI.....6TH PLAINTIFF
MARGARET NJAMBI MACHARIA.....7TH PLAINTIFF
MARY WANJIRU WANGARI.....8TH PLAINTIFF
TIMOTHY NJOROGE WAWERU.....9TH PLAINTIFF
JAMES MWANGI NJOROGE.....10TH PLAINTIFF
DAVID MUYA GITITI.....11TH PLAINTIFF
ELIZABETH MUTHONI.....12TH PLAINTIFF
GEORGE KINUTHIA.....13TH PLAINTIFF
PETERSON MWANGI KAKA.....14TH PLAINTIFF

VERSUS

KANYAMWI TRADING COMPANY LIMITED..... DEFENDANT

RULING

1. By Notice of Motion dated 14th May 2019, the plaintiffs sought an injunction to restrain the defendant “by itself or persons claiming authority under it from selling, accessing, entering, remaining thereon, evicting, demolishing the developments erected thereon and/or interfering in any manner with the plaintiffs/applicants occupation, possession and use of the properties known as Gilgil/Karunga Block 12 (Uikaro Kanyamwi Farm)/275, 280, 282, 344, 369, 379, 384, 403, 441, 390, 35, 407 & 308 formerly known as LR No. 3777/204” pending hearing and determination of this suit.

2. The application is supported by an affidavit sworn by the 5th plaintiff. He deposed that the applicants have been in occupation of and have developed the parcel of land formerly known as LR No. 3777/204 which the defendant subdivided to create Gilgil/Karunga Block 12 (Uikaro Kanyamwi Farm)/275, 280, 282, 344, 369, 379, 384, 403, 441, 390, 35, 407 & 308 (the suit properties) since the year 1983 to the exclusion of the defendant. They have therefore filed the originating summons herein seeking an order that the defendant’s title has been extinguished. He further deposed that the defendant is threatening them with demolition of their properties.

3. Though served, the defendant neither responded to the application nor attended court at its hearing. Counsel for the applicants urged the court to allow the application.

4. I have considered the application and the supporting affidavit. The applicants seek an interlocutory injunction. They must therefore satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. They 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.

5. The application is unopposed and the applicants' allegations remain uncontested. All they have 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 before 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**.

6. There being no challenge to the applicants' case and based on the material placed before the court, I am persuaded that they have established that they have been in occupation of and have developed the suit properties and that the defendant is threatening them with demolition of their properties. They have established a *prima facie* case. I do not think that damages can be an adequate compensation for them considering that they are now claiming title to the suit properties. I am thus satisfied that they have made a case for granting an injunction.

7. In the end, I grant an injunction restraining the defendant by itself or persons claiming authority under it from selling, accessing, entering, evicting, demolishing the developments erected thereon and/or interfering in any manner with the plaintiffs'/applicants' occupation, possession and use of the properties known as Gilgil/Karunga Block 12 (Uikaro Kanyamwi Farm)/275, 280, 282, 344, 369, 379, 384, 403, 441, 390, 35, 407 & 308 formerly known as LR No. 3777/204 pending hearing and determination of this suit. The applicants shall have costs of the application.

Dated, signed and delivered in open court at Nakuru this 29th day of May 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Kahiga for the plaintiffs/applicants

No appearance for the defendant/respondent

Court Assistants: Beatrice & Lotkomo