



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 103 OF 2017

EDWARD SHAVANJI ANGWE.....PLAINTIFF/APPLICANT

VERSUS

MALAKI AKHAMWA MAKOMERE.....1ST DEFENDANT/RESPONDENT

GLADYS CHITAI2ND RESPONDENT

EVERLYN BWOYA.....3RD RESPONDENT

RULING

The application is dated 15th March 2019 seeking the following orders;

1. The honourable court do determine that for the purpose of this proceedings, the 2nd respondent Gladys Chitai and the 3rd respondent Everline Bwoya be enjoined in this suit.
2. An order of temporary injunction restraining the respondents, their agents, servants or assignees from evicting the applicant from land parcels No. MARAMA/SHIRO TSA/2219 and MARAMA/SHIRO TSA/222 being the subdivision of the original title MARAMA/SHIRO TSA/268.
3. An order of temporary injunction restraining the respondents, their agents, servants or assignees from entering upon, tilting or in any manner dealing with the peaceful use of the applicant's parcels No. MARAMA/SHIRO TSA/2219 and MARAMA/SHIRO TSA/2220 being the subdivision of the original title MARAMA/SHIRO TSA/268.
4. The suit does proceed to hearing and determination with the 1st, 2nd and 3rd respondent as the defendants.
5. Costs of the application do abide the outcome.

The plaintiff/applicant submitted that he sought under originating summons title to land parcel MARAMA/SHIRO TSA/2219 and MARAMA/SHIRO TSA/2220 being the subdivisions of the original title MARAMA/SHIRO TSA/268. That the 1st respondent has sold, sub divided and effected transfer of the original title MARAMA/SHIRO TSA/268 to third parties. That the 2nd and 3rd respondents are in the process of evicting him and his family from his parcel of land. That the enjoining of the 2nd and 3rd respondents is mandatory before the case can proceed. That Gladys Mukungu and Francis Aywaya are the buyers of the original parcel of land MARAMA/SHIRO TSA/268. The 1st and 2nd respondent gave oral submissions. The 1st respondent submitted that the land is hers and she sold it. The 2nd respondent stated she was a buyer.

This court has carefully considered all the submissions herein. The principals governing the grant of interlocutory injunction 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 *prima 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.”

This application is brought on the grounds that, the 1st respondent sold and subdivided the land parcel in question and effected transfer to the 2nd and 3rd respondents. The enjoining is necessary for the suit to proceed to hearing and determination. The respondents are also threatening to evict the applicant and his family. I find that the orders sought are in interest of justice. I find that the applicant has established a *prima facie* case and I grant prayer I of the application. I also order that the status quo be maintained pending the hearing and determination of this suit. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 8TH DAY OF MAY 2019.

N.A. MATHEKA

JUDGE