

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO 199 OF 2017

FBP LIMITED.....PLAINTIFF

VERSUS

DAVID MWANGANGI.....1 ST DEFENDANT

MATIKO MUTUA.....2 ND DEFENDANT

KINGAUSI KUTHENGE.....3 RD DEFENDANT

RULING

1. On 17/7/2017, Gitumbi J set down this matter for mention on 24/1/2018 with a view to giving a ruling date. Come January 2018, Gitumbi J was transferred to the Judiciary Training Institute. Consequently, the matter was assigned to me and listed before me on 24/1/2018 for directions. On that day, there was no attendance by the parties. I subsequently mentioned the matter on four subsequent occasions. There was no attendance by the parties on the four occasions. On 19/2/2018, I set down the matter for ruling on the plaintiff's application dated 24/3/2017. The said application is the subject of this ruling.

2. A brief background of this claim is that, on 24/3/2017, the plaintiff, through a plaint dated 24/3/2017, brought this suit contending that it was the registered proprietor of Land Reference Number 209/11804 comprised in Grant Number IR 67035 measuring approximately 2 hectares, situated at Kiangombe, Nairobi (the **suit property**). It further contended that the defendants had illegally trespassed onto the suit property. It sought, among other orders, a permanent injunctive order restraining the defendants against continuing to trespass on the suit property.

3. Together with the plaint, the plaintiff brought a notice of motion dated 24/3/2017 seeking a temporary injunctive order restraining the defendants against committing the trespass, pending the hearing and determination of the suit. The application was supported by an affidavit sworn on 24/3/2017 by Nainesh Kumar Kantilal in which he reiterated that the plaintiff was the registered proprietor of the suit property.

4. Satisfied that the defendants had been served with the application, Gitumbi J on 6/4/2017 directed that the application be canvassed through written submissions. The applicant filed written submissions on 13/7/2017. The defendants neither responded to the application nor filed written submissions.

5. I have considered the application. The single question to be answered in the application is whether the applicant has satisfied the criteria for grant of interim injunction as spelt out in **Giella v Cassman Brown & Company Limited (1973) EA 358**. Under that criteria, the applicant is required to demonstrate a *prima facie* case with a probability of success. Secondly, the applicant is required to demonstrate that if the injunction is not granted, he would stand to suffer irreparable injury which cannot be compensated by an award of damages. If the court is in doubt as to either of the above two requirements, the application is to be decided on a balance of convenience.

6. Annexed to the material application is a Grant designated as Number IR 67035. The said Grant is indicated to have been registered and issued to M/s Kenexim Services Limited on 18/9/1995. It is indicated to have been subsequently transferred to the plaintiff on 17/12/2014. The suit property is allegedly contained in the said Grant. It is alleged that the defendants have trespassed onto the suit property and are continuing with the trespass.

7. In the absence of any evidence to controvert the case put forth by the plaintiff, I will allow prayer 3 of the notice of motion dated 24/3/2017. The interim injunctive order will remain in force for a period of 12 months. Because there is no evidence of service of summons to enter appearance, the plaintiff will serve summons through a prominent notice in either the Daily Nation or the Standard Newspaper and file an affidavit of service within sixty (60) days. In default, this suit will stand dismissed.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF JUNE 2019.

B M EBOSO

JUDGE

In the presence of:-

Court clerk - June Nafula