



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 1207 OF 2016

GEORGE NGURE KARIUKI.....PLAINTIFF

=VERSUS=

STEPHEN KINUTHIA.....DEFENDANT

RULING

1. This is the Notice of Motion dated 13th September 2016 brought under Section 3A and 63 (c) of the Civil Procedure Act, Order 40 Rule 1 and 4 of the Civil Procedure Rules and all such other enabling provisions of the law:-

2. It seeks orders:-

1. Spent

2. Spent

3. Spent

4. That pending the hearing and determination of this suit, the defendant whether by himself, his agents, servants or otherwise howsoever be restrained from trespassing, encroaching, constructing, erecting temporary structures, entering or in any other way interfering with the plaintiff's quiet possession and occupation of all those properties comprised in LR No. KAJIADO/OLCHORO-ONYORE/3448, KAJIADO/OLCHORO-ONYORE/3449, KAJIADO/OLCHORO-ONYORE/5011, KAJIADO/OLCHORO-ONYORE/4053.

5. That the costs of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs (1) to (10).

4. The application is supported by the affidavit of George Ngure Kariuki the plaintiff/applicant herein sworn on the 13th September 2016.

5. Upon being served with the summons to enter appearance, copies of plaint and the application, the defendant entered appearance through the firm of W. G. Wambugu & Co. Advocates. He neither filed a response to the application nor statement of defence.

6. It is the plaintiff's/applicant's submissions that he is the registered proprietor of the suit properties. That he has been in possession since the year 1992. Further that sometimes in August 2016 he discovered the defendant was erecting semi-permanent structures and a fence on the suit properties. He prays for the orders sought.

7. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the written submissions of counsel and the authorities cited. The issues for determination are:-

i. Whether or not the plaintiff/applicant's application meets the threshold for grant of temporary injunction.

ii. Who should bear costs.

8. At this juncture it is necessary to briefly examine the legal principles governing the applications of this nature. In an application for an injunction the onus is on the application to satisfy the court that it should grant an injunction. The principles were set out in the precedent

setting case of **Giella vs Cassman Brown & Co Ltd [1973] EA 358**. In the case of **Mrao Ltd vs Frist American Bank of Kenya Ltd & 2 Others [2003] KLR 125** the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

9. In the case **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557** Bosire J (as he then was) held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

10. I find that the plaintiff/applicant has demonstrated that he is the registered owner of the suit properties and he deserves this kind of protection. I also find that he has established a prima facie case with a probability of success at the trial.

11. Section 26(1) of the Land Registration Act, 2012 provides that:-

The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(1) (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

12. In conclusion I find merit in this application and grant the orders sought namely:-

a. That an order of injunction be and is hereby issued restraining the defendant whether by himself, his agents, servants or otherwise howsoever be restrained from trespassing, encroaching, constructing, erecting temporary structures, entering or in any other way interfering with the plaintiff’s quiet possession and occupation of all those properties comprised in LR No. KAJIADO/OLCHORO-ONYORE/3448, KAJIADO/OLCHORO-ONYORE/3449, KAJIADO/OLCHORO-ONYORE/5011, KAJIADO/OLCHORO-ONYORE/4053 pending the hearing and determination of this suit.

b. That the costs of the application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 31ST day of JULY 2019.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Litoro for Monda for the Plaintiff

No appearance for the Defendant

Kajuju - Court Assistant