



**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND CASE No. 96 OF 2018**

**SAMUEL KIPNG'ETICH LANGAT.....PLAINTIFF**

**VERSUS**

**SAMUEL TUWEI CHEPKWONY.....1<sup>ST</sup> DEFENDANT**

**PAUL KIMUTAI CHEPKWONY.....2<sup>ND</sup> DEFENDANT**

**SAMUEL KIPROP LANGAT.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of plaintiff's Notice of Motion dated 26<sup>th</sup> February 2018, an application through which the plaintiff seeks the following orders:

a) Spent.

b) Spent.

c) That the Officer Commanding Kiptagich Police Station be directed to ensure compliance with the Orders of this Honourable Court.

d) That pending the hearing and determination of this suit, the Honourable Court be pleased to issue a temporary injunction restraining the defendants herein whether by themselves, their agents and/or servants from invading, trespassing, grazing, cultivating or in any way whatsoever interfering with the Plaintiff's quiet possession and use of L.R NO. Nakuru/Olenguruone/Kiptagich/627 which is currently occupied by the Plaintiff.

e) THAT cost of this Application be in the cause.

2. The application is supported by an affidavit sworn by the plaintiff and is opposed through an affidavit sworn by the 3<sup>rd</sup> defendant. Parties also filed and exchanged written submissions. The 1<sup>st</sup> and 2<sup>nd</sup> defendants neither responded to the application nor participated in its hearing. I have considered the application, the affidavits filed and the submissions.

3. The applicant seeks an interlocutory injunction. He must therefore satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. This entails establishing 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. 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. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**.

4. The applicant's case is that he is the owner and in occupation of the parcel of land known as Nakuru/Olenguruone/Kiptagich/627 (the suit land) having purchased it from one Moses Kimutai A. Chepkwony sometime in the year 2005. The property is however still registered in the name of the said vendor. He lived peacefully on the suit land with his family from 2005 to May 2012 when the defendants threatened to evict him therefrom. He added that the defendants have now trespassed on the property, erected and are in the process of digging a pit latrine on it.

5. In response the 3<sup>rd</sup> defendant states that he owns a parcel of land known as Nakuru/Olenguruone/Kiptagich/626 which is adjacent to the suit land. He concedes that the applicant has been in occupation of the suit land and adds that the applicant attempted to move into and forcefully take Nakuru/Olenguruone/Kiptagich/626 in the year 2013 but he resisted the move. That the applicant has been claiming that the two parcels are one.

6. I note that both parties have annexed copies of the respective title deeds for Nakuru/Olenguruone/Kiptagich/627 and Nakuru/Olenguruone/Kiptagich/626. The registered proprietor of Nakuru/Olenguruone/Kiptagich/627 as per the annexed title dated 27<sup>th</sup> May 2002 is Moses Kimutai A. Chepkwony while the registered proprietor of Nakuru/Olenguruone/Kiptagich/626 as per the annexed title dated 22<sup>nd</sup> May 2003 is Kiprop Arap Langat. It seems to me that even though they have not pleaded it so, the dispute between the parties is really one of boundary.

7. **Section 18** of the **Land Registration Act** provides:

*(1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.*

*(2) The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.*

*(3) Except where, it is noted in the register that the boundaries of a parcel have been fixed, the Registrar may, in any proceedings concerning the parcel, receive such evidence as to its boundaries and situation as may be necessary: Provided that where all the boundaries are defined under section 19(3), the determination of the position of any uncertain boundary shall be done as stipulated in the Survey Act, (Cap. 299).*

8. Clearly, the court has no jurisdiction in the matter. Parties as well as Moses Kimutai A. Chepkwony who is the registered proprietor of Nakuru/Olenguruone/Kiptagich/627 should seek the assistance of the land registrar to solve the dispute as to the extent of their respective parcels. I am not persuaded that the plaintiff has established a prima facie case. That being so, Notice of Motion dated 26<sup>th</sup> February 2018 is dismissed. As prayed in the application, costs shall be in the cause.

9. Ruling herein was to be delivered on 10<sup>th</sup> April 2019 but was delayed since I proceeded on medical leave. The delay is regretted.

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

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Mwalo holding brief for Mr Otieno for the plaintiff/applicant

No appearance for the 1<sup>st</sup> defendant/respondent

No appearance for the 2<sup>nd</sup> defendant/respondent

3<sup>rd</sup> defendant/respondent present in person

Court Assistants: Beatrice & Lotkomo