



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**CASE No. 169 OF 2017**

**JAMLICK MURIUKI NGAARI.....PLAINTIFF**

**VERSUS**

**MARTHA KABON CHEBII.....1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR NAKURU.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. By Notice of Motion dated 19<sup>th</sup> April 2017, the plaintiff sought an injunction to restrain the 1<sup>st</sup> defendant either by herself, agents and/or employees from entering, tilling, selling, disposing, transferring or in any other way interfering with the plaintiff's ownership and possession of parcel of land known as Nakuru Municipality Block 23/304 pending hearing and determination of the suit.
2. The application is backed by a supporting affidavit and further affidavit, both sworn by the plaintiff. The 1<sup>st</sup> defendant opposed the application through a replying affidavit. The plaintiff and the 1<sup>st</sup> defendant also filed and exchanged written submissions. The 2<sup>nd</sup> defendant neither responded to the application nor participated in its hearing. In any case, the orders sought do not target the 2<sup>nd</sup> defendant.
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. From the material placed on record, both the plaintiff and the 1<sup>st</sup> defendant claim to be registered proprietor of the suit property. The plaintiff has annexed a certificate of lease in his name, issued on 27<sup>th</sup> December 2012 while the 1<sup>st</sup> defendant has also exhibited a certificate of lease in her name, issued on 26<sup>th</sup> February 2013. The 1<sup>st</sup> defendant claims that she got the property by transmission from the estate of Charles Changwony Chebii, her late husband, a former magistrate who passed away on 16<sup>th</sup> July 2008 and in respect of whose estate she and her son obtained letters of administration on 29<sup>th</sup> October 2008 in **HC Succession Cause No. 473 of 2008 (Nakuru)**.
5. The grant was confirmed on 12<sup>th</sup> October 2009 and the suit property distributed to her wholly. She annexed a copy of the death certificate, gazette notice in respect of the petition for letters of administration, the letters of administration, certificate of confirmation of grant, transfer by personal representative, white card for the suit property and certificate of search as at 19<sup>th</sup> December 2017. She added that sometime around the year 2010, she learnt that someone was masquerading as her deceased husband with the intention of selling the suit property and she duly made a report to the police.
6. On the other hand, the plaintiff claims that he bought the suit property in the year 2010 from one Charles Changwony Chebii who was a farmer and not a magistrate.
7. Both parties have some sort of documentation to support their respective claim. At this point, I cannot determine who has a better claim. That is the preserve of the trial court. In these circumstances, I cannot say that the plaintiff has or does not have a *prima facie* case. I do not think that this is the type of case in which justice will be served by granting an injunction as is sought or simply dismissing the application. It is clear to me that it is necessary to preserve the suit property by way on stopping further dealings in respect the suit property but without interfering with its current use or possession, pending hearing of the suit.
8. Such an approach is in line with **paragraph 32 of Gazette Notice No. 5178** titled "**Practice Directions on Proceedings in the**

**Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts”** which encourages preservation of the suit property. It provides:

*During the inter-partes hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.*

9. In the circumstances, I make the following orders:

a) That pending the hearing and determination of this suit, an inhibition be registered against title number Nakuru Municipality Block 23/304.

b) That costs of Notice of Motion dated 19<sup>th</sup> April 2017 shall be in the cause.

10. It is so ordered.

11. Ruling in this matter was to be delivered on 20<sup>th</sup> March 2019 but was delayed since I proceeded on medical leave. The delay is regretted.

**Dated, signed and delivered in open court at Nakuru this 18<sup>th</sup> day of July 2019.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

No appearance for the plaintiff/applicant

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

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

Court Assistants: Beatrice & Lotkomoi