



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 344 OF 2017

LYDIA MUTHONI KAMAU.....PLAINTIFF

VERSUS

THE DIRECTOR GENERAL, KENYA AGRICULTURAL & LIVESTOCK

RESEARCH ORGANISATION.....1ST DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

1. This ruling is in respect of two applications: plaintiff's Notice of Motion dated 13th September 2017 and 1st defendant's Notice of Motion dated 27th September 2017. In Notice of Motion dated 13th September 2017 the plaintiff seeks an interlocutory injunction to restrain the 1st defendant, its agents, servants and assigns from encroaching and trespassing on land Registration Number 4358 (Original Number 425/2/41/4/2), hereinafter "the suit property". The application is supported by an affidavit sworn by the plaintiff and another sworn by Gichuki Kenda. The application was filed under certificate of urgency during the court's recess and was placed before my sister M. Oundo J. on 14th September 2017 who granted an injunction pending inter parte hearing.

2. The 1st defendant was aggrieved by the ex parte orders and filed Notice of Motion dated 27th September 2017 seeking setting aside of those orders. The application is supported by an affidavit sworn by Mr T. P. Lanyasunya, the director of the 1st defendant. He also swore and filed a replying affidavit in respect of plaintiff's Notice of Motion dated 13th September 2017. The plaintiff also filed a replying affidavit in response to 1st defendant's Notice of Motion dated 27th September 2017.

3. The two applications were heard together by way of written submissions. All parties filed and exchanged submissions. I have considered the applications, the affidavits filed and the submissions.

4. I will deal with plaintiff's Notice of Motion dated 13th September 2017 first. If it fails then the 1st defendant's Notice of Motion dated 27th September 2017 will be overtaken by events. If it fails then Notice of Motion dated 27th September 2017 will be liable to dismissal.

5. The plaintiff seeks interlocutory injunction. The principles applicable while considering such an application are well known. The applicant must satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358** entails by establishing a *prima facie* case with a probability of success. Even if she establishes a *prima facie* case, an injunction will not issue if damages can be an adequate compensation to her. 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 these three conditions are 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**.

6. The plaintiff contends that she has been the registered proprietor of the suit property since 14th May 1980. She annexed a copy of a certificate of title. The suit property neighbours the 1st defendant's plot known as LR No. 3989/1. Sometime in December 2016, she learnt that the 1st defendant had erected a barrier on the suit property and also put up a sign that the property belongs to the Government of Kenya. I note that the plaintiff besides annexing a copy of her title document which supports her alleged ownership as far back as 14th May 1980, did not annex any recent certificate of search to show the latest position. Additionally, I also note that the plaintiff did not demonstrate any recent physical activities on the suit property other than seeking approvals for subdivision.

7. On the other hand, the 1st defendant contends that it is the registered proprietor of the suit property pursuant to a certificate of title dated 8th October 2004, a copy of which it annexed. I have perused the said title document and I note that it is in respect of LR No. 27158 (Original Number 3989/7/1 and 4358/1) measuring 1562 hectares. According to the 1st defendant, the title was issued to it following an amalgamation

of 4 parcels that previously belonged to it including the suit property herein. I note that indeed the certificate of title states on the face of it that LR No. 27158 comprises a parcel that was originally known as LR No. 3989/7/1 and another that was originally known as LR No. 4358/1. The plaintiff herself has confirmed that LR No. 3989/7/1 is owned by the 1st defendant and neighbours the suit property. All this seems to verify the 1st defendant's allegation of amalgamation. Whether or not the amalgamation and issuance of the title was lawfully done is not for determination now. Prima facie however, the 1st defendant seems to be the registered proprietor of the suit property.

8. Additionally, the 1st defendant has alleged that it has been in possession of the suit property since 1963 and that it has used it for livestock research and related activities. It provided photographs and a veterinary report dating as far back as 1963 to support this claim. The plaintiff did not file any affidavit to counter the 1st defendant's version of its activities on the ground.

9. In view of the foregoing discussion, I am not persuaded that the plaintiff has established a prima facie case. That being the case, Notice of Motion dated 13th September 2017 is dismissed with costs to the defendants. Notice of Motion dated 27th September 2017 is overtaken by events and needs no consideration.

10. Ruling herein was to be delivered on 13th February 2019 but was delayed since I proceeded on medical leave. The delay is regretted.

Dated, signed and delivered in open court at Nakuru this 15th day of July 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff

Mrs Oliech holding brief for Mr Otieno for the 1st defendant

No appearance for the 2nd defendant

Court Assistants: Beatrice & Lotkomoi