



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 114 OF 2019

JANE NANJALA SASITA.....PLAINTIFF/APPLICANT

VERSUS

WILLIAM WANYONYI SASITA

MAURICE E. MAKOKHA.....DEFENDANTS/RESPONDENTS

RULING

The application is date 23rd September 2019 and is brought under sections 1A, 1B, 3, 3A of the Civil Procedure Act and order 40 rule 1, order 50 rule 1, of the Civil Procedure Rules seeking for orders that:

1. This application be certified urgent and service thereof be dispensed with.
2. A temporary injunction be issued restraining the 2nd defendant/respondent either acting by himself, servants and or agents from trespassing into, wasting, interfering with, alienating, selling, planting trees and crops, construction, fencing altering the boundary of the suit land, entering into any dealings or otherwise interfering with the plaintiff/applicant's quiet possession of all that parcel of land known as Kakamega/Sango/2076 pending the hearing and determination of this application.
3. A temporary injunction be issued restraining the 2nd defendant/respondent either by himself, servant and or agents from trespassing into, wasting, interfering with, alienating, selling, planting trees and crops, construction, fencing, altering the boundary of the suit land, entering into any dealings or otherwise interfering with the plaintiff/applicant's quiet possession of all that parcel of land known as Kakamega/Sango/2076 pending the hearing and determination of this suit.
4. The Officer Commanding Matunda Police Station (OCS Matunda Police to Station) to enforce this order.
5. Costs be provided for.

It is based on the grounds that, the plaintiff has been lawfully married to the 1st defendant and together they have acquired some matrimonial properties including the parcel of land known as Kakamega/Sango/2076. The suit land forms part of the family and matrimonial land/property of the plaintiff and the 1st defendant and therefore crucial for the livelihood/dwelling of the plaintiff and her children/family. Apparently on or about 25th November, 2014 the 1st and 2nd defendants in breach of the law, and unconfirmed nor unconsented act by the 1st defendant from the plaintiff, purported to enter into a land sale agreement for the suit land without the involvement nor consent of the plaintiff and other members of the immediate family. The plaintiff only learned of this purported sale of the recent past when one of her sons namely Wanjala Sasita Paul planted maize on the suit land in March/April 2019 and the 2nd defendant went and removed the seeds claiming proprietary interest. The said Wanjala Sasita Paul made a report of the damage to Kogo Patrol Base. The plaintiff on learning about the purported transaction, immediately notified the defendants of her objection to the sale of the suit land and demanded that the 2nd defendant restrains from undertaking further activities and/or trespassing onto the suit land pending the resolution of the matter. Despite several demands being issued to the effect that the 2nd defendant ceases to interfere with the suit land in flagrant violation of the plaintiff's rights, the 2nd defendant continues to do so and he has begun interfering with the suit parcel of land by fencing, planting trees and crops hence altering its status and he has threatened not to respond to this suit but have the suit parcel of land transferred to a 3rd party. The plaintiff has cautioned the 2nd defendant and advised him that the suit herein is still pending for hearing and determination. The plaintiff has a prima facie case with probability of success. The plaintiff cannot be adequately compensated by an award of damages if the interference continues as the 2nd defendant is altering the status of the suit land. The application has been brought in utmost good faith. The 2nd defendant shall not suffer prejudice if orders sought are granted. It is only fair and just that the application herein be allowed.

This court has considered the application and the submissions therein. The respondents were served with the application but failed to attend court or file any opposition to the same. The application being one that seeks injunctions, has to be considered within the principles set out

in the case of *Giella vs Cassman Brown & Co. Ltd 1973 E.A 358* and which are:-

1. *The applicant must show a prima facie case with a probability of success at the trial*
2. *The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,*
3. *If in doubt, the Court will decide the application on a balance of convenience.*

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a court of equity.

The applicant submitted that, she has been lawfully married to the 1st defendant and together they have acquired some matrimonial properties including the parcel of land known as Kakamega/Sango/2076. The suit land forms part of the family and matrimonial land/property of the plaintiff and the 1st defendant and therefore crucial for the livelihood/dwelling of the plaintiff and her children/family. Apparently on or about 25th November, 2014 the 1st and 2nd defendants in breach of the law, and unconfirmed nor unconsented act by the 1st defendant from the plaintiff, purported to enter into a land sale agreement for the suit land without the involvement nor consent of the plaintiff and other members of the immediate family. This court has perused the application and no documentary evidence has been adduced to confirm the ownership of the suit land. At this stage it is difficult to ascertain the ownership and hence the applicant's interest if at all. I find that the applicant has failed to establish a prima facie case against the respondents. This application is therefore not merited and is dismissed. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18TH DECEMBER 2019.

N.A. MATHEKA

JUDGE