



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC NO. 40 OF 2019

KENOL KOBIL PLC.....PLAINTIFF

-VERSUS-

THE COUNTY GOVERNMENT OF NAROK.....DEFENDANT

RULING

By a Notice of Motion dated 12th July, 2019 and brought under section 1A, B, 3A and 63 of the Civil Procedure Act and order 40 Rule 2 of the Civil Procedure Rules the Plaintiff Applicant had sought for the following orders: -

1. That the Application be certified as urgent and service of this application be dispensed with in the first instance.
2. That pending the hearing and determination of this application interparties an ex parte interim injunction be granted restraining the defendant, whether by itself and/or its servants, agents or other persons under its control, from entering upon or into, wasting, demarcating, damaging or alienating or in any manner dealing with or interfering with the property known as Narok Township/343.
3. That pending the hearing and determination of the suit herein an interlocutory injunction be granted restraining the Defendant, whether by itself and/or its servants, agents or other persons under its control, from entering upon or into wasting, demarcating, damaging or alienating or in any manner whatsoever dealing with or interfering with the property known as Narok Township/343.
4. Costs of this application be provided for.

The Application is based on the grounds that the Plaintiff is the registered owner of Land Parcel Narok Township/343 and it has been in possession and occupation of the land and a certificate of lease duly issued in its name and that the Defendant had without any authority trespassed on its land and began the process of demarcating on the allegation that the suit land is on a road reserve and that the Plaintiff is apprehensive that the Defendant will take over possession of the land and it will consequently suffer irreparable loss and damages.

The Application was opposed by the Respondent by way of a replying affidavit sworn by one Godfrey Ndubi Kwena who deponed that he is Narok Town Administrator of the Respondent. The Respondent denies that it had trespassed on the suit land but contends that the suit property is adjacent to a 40 metre road reserve but it merely carried out rehabilitation work on 12 metre road reserve adjacent to the property.

I have read the Application before me and the submissions filed by the parties. This is an application which the applicant is seeking for equitable remedy of injunction in which is discretionary. The law on the grant of discretionary orders is now settled and what constitutes the ingredients for the grant of the same is clearly elucidated in the case of **GEILLA-VERSUS-CASMAN BROWN CO LTD(1963)EA** as whether the Applicant has established a prima facie case with a probability of success, whether damages will be adequate compensation and in whose favour the balance of convenience tilts.

In the instant application the Applicant's ownership, possession and occupation of the suit land is not contested. It purchased the same and have a certificate of lease. The Respondent's only contention is that it was carrying out rehabilitation works which it has completed on a reserve road adjacent to the suit property.

From the foregoing I find that the Plaintiff/Applicant has established the ingredients required to establish a prima facie case with a probability of success and having so established I will not direct on certain grounds and I consequently allow the Notice of Motion dated 12th July, 2019 as prayed. Costs be in the cause.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAROK ON THIS 18TH DAY OF DECEMBER, 2019

Mohammed Kullow

Judge

18/12/19

In the presence of: -

CA: Chuma/Kimiriny

Masikonde holding brief for Chelanga for the defendant

N/A for the plaintiff

Mohamed Kullow

Judge

18/12/19