



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**CASE No. 226 OF 2016**

**MBAWAKU TRANSPORTERS & COM. CO. LTD.....PLAINTIFF**

**VERSUS**

**SARAH WANJIRU NJENGA.....DEFENDANT**

**RULING**

1. By Notice of Motion dated 24<sup>th</sup> June 2016, the plaintiff seeks the following Orders:

**a) Spent.**

**b) Spent.**

**c) That pending the hearing and determination of this suit, this honourable court be pleased to issue an order of temporary injunction restraining the defendant/ respondent by herself, her agents, servants and/or assigns from entering, interfering, cultivating, disposing, alienating and or in any manner whatsoever interfering with the plaintiff/applicant's peaceful and quiet possession, occupation and use of all that parcel of land known as Ngoriga Light Industries/11 NGLI.**

**d) That pending the hearing and determination of this suit, this honourable court be pleased to issue a mandatory injunction compelling the defendant/respondent to vacate the plaintiff/applicant's parcel of land known as Ngoriga Light Industries/11 NGLI.**

**e) That costs of this application be provided for.**

2. The application is supported by an affidavit sworn by Samuel Mbatia Kuria, the managing director of the plaintiff/applicant. He deposed that the plaintiff acquired the parcel of land known as **Ngoriga Light Industries/11 NGLI** through letter of allotment dated 12<sup>th</sup> March 2010 and has been paying rates in respect thereof. He annexed a copy of the allotment letter and copies of rates payment receipts. He further deposed that on or about 14<sup>th</sup> March 2014, the defendant invaded the parcel of land and started fencing it without any valid reason. Consequently, he urged the court to grant the orders sought.

3. Despite being served with the application, the defendant did not file any response and did not attend the hearing of the application. Accordingly, counsel for the applicant urged the court to allow the application since it is unopposed.

4. I have considered the application. In an application for an interlocutory injunction, the applicant must satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. He must establish a *prima facie* case with a probability of success. Even if a *prima facie* case is established, an injunction would not be issued if damages can adequately compensate him. Finally, if the court is in doubt as to the answers of the above two tests then the court would determine the matter on a balance of convenience. As was held by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, 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 and that if *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration.

5. From the evidence before the court, there is no dispute that the plaintiff was allocated the suit property by the County Council of Nakuru through letter of allocation dated 12<sup>th</sup> March 2010. Further, from the annexed copies of rates payment requests and receipts, I am persuaded that the County Council of Nakuru and lately County Government of Nakuru have been demanding and collecting rates from the plaintiff in respect of the suit property. Obviously, all these are findings based on the evidence presently before the court. The trial court will reach its own findings on the basis of the evidence that will be placed before it.

6. Based on the evidence before the court, I am satisfied that the plaintiff has established prima facie case with a probability of success and that it will suffer irreparable damage if an injunction is not granted. An interlocutory restraining injunction will therefore issue.

7. The plaintiff has also sought a mandatory injunction compelling the defendant to vacate the suit property. Essentially, this is the same prayer sought at prayer (a) in the plaint. This aspect of the case should be determined upon hearing of the suit.

8. At the hearing of the application, the court enquired from counsel for the plaintiff on whether the matter could be handled by the subordinate court. Counsel agreed that the suit can be handled by the subordinate court. Indeed, the prayers sought in the plaint in this matter are:

*a) Eviction.*

*b) A permanent injunction to restrain the defendant by herself, servants, agents and/or employees or otherwise from interfering, with the plaintiff's quiet enjoyment or in any way dealing with all that parcel of land known as Ngoriga Light Industries/11 NGLI.*

*c) Costs of this suit and interest.*

9. In the end, I order that:

a) An injunction is hereby granted restraining the defendant/ respondent by herself, her agents, servants and/or assigns from cultivating, disposing, alienating and or in any manner whatsoever interfering with the plaintiff/applicant's peaceful and quiet possession, occupation and use of all that parcel of land known as **Ngoriga Light Industries/11 NGLI**. The injunction is **not** an eviction order.

b) Costs of the application are awarded to the plaintiff.

c) This suit is hereby transferred to Chief Magistrate's Court Nakuru for hearing and determination.

10. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of March 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Ms. Wairimu holding brief for Mr. Chege for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistants: Gichaba & Lotkomo