



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 139 OF 2016**

**JOSEPH KIMOLOI LONGURA.....PLAINTIFF**

**VERSUS**

**KIBIRITI LOKIRA LOKWARA.....DEFENDANT**

**R U L I N G**

1. The application dated 1/3/2017 seeks an order of temporary injunction to restrain the defendant from cutting trees, fencing and or in any other way causing damage on Land Parcel No. **West Pokot/Siyoi/609** pending the hearing and determination of this suit.
2. The plaintiff alleges that the defendant has begun cutting down trees on the land and that he has fenced off a portion of the said land without the plaintiff's consent. The plaintiff avers that he is the registered proprietor of the suit land and exhibits a copy of the Certificate of Official Search in respect thereof. He also exhibits a copy of a letter dated 10/1/2017 from the District Forest Officer, West Pokot showing that some trees worth Kshs.62,250/= had been felled on the plaintiff's land.
3. The defendant filed grounds of opposition to the application. In those grounds he stated that the prayers sought are not legally obtainable as the defendant is already in possession of 1 acre of the suit land having been placed in possession by the plaintiff, when he purchased it from the plaintiff in 1994, that the plaintiff had given the defendant the original title deed to facilitate the transfer of the said land to the defendant's name, and that the plaintiff is estopped from reneging on his obligations. It is averred that the application does not meet the threshold granting of injunctions.
4. As no facts in opposition to the application are deponed to by way of affidavit, it can safely be presumed that the facts stated by the plaintiff in his supporting affidavit dated 1/3/2018 are correct.
5. I have examined at the plaint and the defence in this suit. This suit is yet to be heard and determined. The issue of whether the alleged agreement of 1994 between the parties exists, or if it exists, has been rendered a nullity by reason of some legal or other circumstance, is an issue for determination at the judgment stage. For now, it suffices to state here that the court has found that the plaintiff has demonstrated that he is the registered proprietor of the land. All interests by an unregistered occupant like the defendant where not reflected on the register, are subject to proof at the hearing.
6. Consequently I find that if the defendant is allowed to waste or change the nature of the land or deplete it of valuable resources, and it subsequently happens at the end of this litigation that the findings are that he does not have any right thereto, the plaintiff would be gravely prejudiced by such action.
7. I find that the plaintiff has established that he has a prima facie case and that he would, if the orders sought are not granted, suffer irreparable loss. I therefore find that the two limbs of the test in the case of *Giella -vs- Cassman Brown [1973] EA 358* have been established.
8. I therefore grant the application dated 1/3/2017 in terms of **prayer No. 1**. The costs shall be in the cause.

**Dated, signed and delivered at Kitale on this 14<sup>th</sup> day of March, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**14/3/2018**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Arunga for plaintiff/applicant

Mr. Teti for the defendant/respondent (absent)

**COURT**

Ruling read in open court in the presence of counsel for the applicant

**MWANGI NJOROGE**

**JUDGE**

**14/3/2018**