

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

PETITION NO. 12 OF 2015

GREAT RIFT GIRLS EDUCATION CENTRE.....PETITIONER

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU....RESPONDENT

RULING

The petitioner, *Great Rift Girls Education Centre, (hereinafter referred to as Petitioner)* has sued the *County Government of Uasin Gishu* by way of petition claiming that the petitioner is established and built on land parcel plot No. Eldoret Municipality Langas plot No. 22/210/003 measuring approximately 5 acres within the County Board of Uasin Gishu.

The respondent has been excising and or hiving off land adjacent to Langas Kapsabet road without notices to the owners and without any justifiable cause in the disguise of expanding and creating public roads. He has been demolishing fences or hedges on the said alleged road.

The petitioner fears that the respondent is headed to her land in dispute. The petitioner is apprehensive that her Constitutional Right to property as enshrined in the Constitution of Kenya 2010 is threatened and is most likely to be violated.

The petitioner therefore prays for conservatory orders vide notice of motion dated 19.8.2015 which is supported by an affidavit filed by the petitioner and further filed on 26.1.2016. The respondent did not file a replying affidavit but chose to file grounds of opposition. The gist of the grounds of opposition is that no material has been placed before the court that the respondents intends to hive off the public land.

I have considered the application and the supporting affidavit including the further affidavit and the ground of opposition and do find that it has not been denied by the respondent that he intends to interfere with the public land in the guise of construction and expansion of roads. It has not been denied that the plaintiff is the owner of the suit property.

There are three main principles applicable to the granting of an interlocutory injunction in Kenya. These are: 1. Prima facie case 2. Irreparable injury 3. Balance of convenience These principles were set out in the case *of East Africa Industries Ltd v. Trufoods Ltd [1972] EA 420*. These were reiterated in the case of *Giella v. Cassman Brown [1973] EA 358*.

In *East Africa Industries Ltd v. Trufoods Ltd*, Spry, V-P (CAEA) said: "A plaintiff has to show a prima facie case with a probability of success and if the court is in doubt it will decide the application on the balance of convenience. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages." In *Giella v. Cassman Brown*, the Court said, "The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience."

I do find that the plaintiff has satisfied the threshold in *Giella -vs- Cassman Brown* as he has established a prima facie case with a likelihood of success as he is the proprietor of the portion of land. If a conservational order is not granted the respondent is likely to interfere with the petitioner's land and interfere with the petition fence.

The petitioner is a girls' school and any interference with the fence will pose great risks to the girls and is likely to be invaded. That if there will be an invasion, the respondents will not be able to compensate the girls and school adequately in damages and even if the matter was to be determined on balance of convenience, it would tilt towards allowing the application as the petitioner stand to suffer greater inconvenience if injunction is not granted and the fence is destroyed. Ultimately, the application is allowed and it is hereby ordered that pending the hearing and determination of the petition conservatory orders, do issue restraining the respondent by itself, its servants and or agents by way of a temporary injunction from trespassing upon, hiving off and or subdividing and or alienating and or in any way dealing with the petitioners. Property being plot no. ELD/LANGAS PLOT NO. 22/210/003 measuring approximately 5 acres. Costs in the cause.

Signed, delivered and dated at Eldoret this 28th June, 2018.

A. OMBWAYO

JUDGE