



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ELC CASE No. 406 OF 2017

JACKSON H. WANDERAPLAINTIFF

VERSUS

BENARD SOIDEFENDANT

RULING

1. By Notice of Motion dated 23rd October 2017, the plaintiff sought the following Orders:

a) *Spent.*

b) *Spent.*

c) *That pending the hearing and determination of this suit, there be orders of injunction restraining the defendant/respondents by themselves from entering, trespassing, cultivating or in any way interfering with the plaintiff's quiet possession of the property known as L.R Nakuru/Saino Settlement Scheme/1854.*

d) *That costs be provided for.*

2. The application is supported by a supporting affidavit and further affidavit, both sworn by the plaintiff. The plaintiff deposed that he is the registered proprietor of the parcel of land known as **Nakuru/Saino Settlement Scheme/1854** (suit property) pursuant to a title deed issued to him on 12th October 2005. He has been in possession of the land and cultivating it since the year 2008. He annexed a copy of the title document and a certified copy of the green card. Sometime in September 2017 he went to check on his land and found that the defendant had planted crops on part of the suit property.

3. The defendant opposed the application through a replying affidavit sworn on 3rd January 2018. He deposed that he bought the suit property from one Daniel Kipkemoi Ronoh pursuant to a sale agreement dated 17th September 2014. He annexed a copy of a title deed in the name of Daniel K. Rono. He has been farming on the plot without any interference from anybody. He stated that he is a purchaser for value and that the injunction sought ought not to issue.

4. The application was heard by way of written submissions. The applicant's submissions were filed on 29th January 2018 while the respondent's submissions were filed on 20th March 2018. I have carefully considered the application, the affidavits filed and the submissions. In an application for an interlocutory injunction, the applicant must satisfy the test laid down 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 will not to issue if damages can adequately compensate the applicant. Finally, if the court is in doubt as to the answers of the above two tests then the court will 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. At the core of this case is the question of ownership of the suit property and the attendant rights of use and occupation thereof. The plaintiff has exhibited a copy of title deed and certified copy of green card both of which show that he became registered proprietor of the suit property on 12th October 2005. On the other hand, the defendant's claim is pegged on a sale agreement dated 17th September 2014, some 9 years after the plaintiff had become registered owner. The vendor in the sale agreement was one Daniel Kipkemoi Ronoh who also claimed to be the registered proprietor of the suit property. However, a perusal of the title document said to be in the vendor's name shows that the said Daniel K. Ronoh allegedly became registered proprietor on 9th April 2008. Needless to state, by then the plaintiff was already registered proprietor. I also note that even though the defendant claims to have bought the suit property on 17th September 2014, no explanation has been offered as to why he is so far not the registered proprietor. Still, the copy of green card which was certified by the land registrar on 13th October 2017 shows that as far as the register is concerned, the plaintiff is the registered proprietor.

6. As a registered proprietor, the plaintiff is entitled to the rights and privileges provided under **sections 24 and 25** of the **Land Registration Act**. I am therefore satisfied that the plaintiff has established a prima facie case with a probability of success. I do not think that damages would compensate him for the loss, damage or wastage of his property.

7. Consequently, I grant an injunction restraining the defendant/respondent by himself, his agents, servants or representatives from entering, trespassing upon, cultivating or in any way interfering with the plaintiff's quiet possession of the property known as L.R Nakuru/Saino Settlement Scheme/1854 pending the hearing and determination of this suit.

8. Cost of the application are awarded to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 13th day of July 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Nancy Njoroge for the plaintiff/applicant

Ms Mathenge holding brief for Ms Ngeno for the defendant/respondent

Court Assistants: Gichaba & Lotkomo