



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAKAMEGA**

**ELC CASE NO. 259 OF 2017**

**REUBEN MUYEKHO MATALE.....PLAINTIFF/APPLICANT**

**VERSUS**

**LUVONGA MULATI.....DEFENDANT/RESPONDENT**

**RULING**

The application is dated 13<sup>th</sup> July 2017 seeking the following orders;

1. THAT this application be certified as urgent and be heard exparte in the 1<sup>st</sup> instance
2. THAT pending the hearing and final determination of this application, the Defendants either by themselves, through their agents, employees, servants, workers and/ or anyother person acting under their direction be restrained by a temporary order of injunction from alienating, moving onto, trespassing, digging trenches, and/ or foundation,constructing any structures depositing building materials or/ in any manner whatsoever from interfering with the Plaintiff squite and/or peaceful occupation, possession and/or user of his parcel KAKAMEGA/MATSAKHA/315.
3. THAT pending the hearing and final determination of this suit, the Defendants either by themselves, through their agents, employees, servants, workers and/ or any other person acting under their direction be restrained by a temporary order of injunction from alienating, moving onto, trespassing, digging trenches, and/ or foundation, constructing any structures depositing building materials or/ in any manner whatsoever from interfering with the Plaintiffs quite and/or peaceful occupation, possession and/or user of his parcel KAKAMEGA/MATSAKHA/315.
4. THAT any other order that shall meet the end of justice be granted in the circumstances.
5. THAT the cost of this application be provided for.

The applicant submitted that, he is the proprietor and registered owner of parcel of land KAKAMEGA/MATSAKHA/315. Annexed is a copy of the title deed marked R.M.M- I. Without any permission and approval the 2<sup>nd</sup> Defendant/Respondent his agents, representatives and/or employees have invaded his land. His efforts to talk to the Defendant and his agents informing them to stop what they were doing as the same was his plot have not heeded any fruits and the Defendants have vowed to continue with their activities on his land and he is likely to suffer irreparable loss and damage unless this court intervenes. The Defendants actions are therefore bound to change the character of the suit property and amounts to altering the character and status of the suit property to his detriment. The Defendants/Respondents have absolutely no right whatsoever to interfere with his continued peaceful occupation of the said plot and/or carrying thereon any work whatsoever without his consent and/or approval. The Defendants/Respondents through their agent have turned violent, thereby threatening his physical occupation possession and use of the same.

The respondent submitted that, the plaintiff/applicant is not entitled to orders sought above since he sold land parcel number KAKAMEGA/MATSAKHA/315 to his late father Jackson Mulati in the year 1972 (annexed is an agreement marked LM 1). That the plaintiff sold the parcel of land to his father and gave him vacant possession of the same in the year 1972. That his father used the portion of land and settled his family therein. That his father left his family on the parcel of land and when he died in the year 2005 he was buried on the portion of land. That they have been occupying and using land parcel number KAKAMEGA/MATSAKHA/315 since the year 1972 and hence have acquired title to the same by way of adverse possession. That the plaintiff/applicant is affidavit contains a lot of falsehood since he doesn't have any proprietary interest of land number KAKAMEGA/ MATSAKHA/315 after he sold the same to their family. That they are entitled to occupy and use land parcel number KAKAMEGA/ MATSAKHA/315 since they bought the same from the plaintiff/applicant for value in the year 1972. That the plaintiff/ applicant's title to land parcel number KAKAMEGA/ MATSAKHA/315 has been extinguished by operation of law since they have occupied the parcel of land for more than twelve years. That the plaintiff /applicant has made this application in bad

faith to interfere with their use of land parcel number KAKAMEGA/ MATSAKHA/315.

This court has carefully considered the submissions and the annexures therein. The principals governing the grant of interlocutory injunction are clear. As stated in the case of **Giella vs. Cassman Brown (1973) EA 358**.

“The conditions of granting an 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 compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

Furthermore, as elaborated in the case of **Mrao Ltd vs. First American Bank of Kenya Ltd & 2 others (2003)** Hon Bosire J.A. held that:

“So what is a prima facie case? I would say that it is a case in which on the material presented to the court or tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter .....”

Further he goes on to state that “..... a prime facie case is more than an arguable case, it is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”

The application is based on the following grounds that the Defendant/ Respondent has encroached into the plaintiffs parcel. The Defendant/ Respondent is using force to usurp the power of the owner (Plaintiff) in respect of the suit parcel. The suit herein shall be rendered nugatory if the Defendant/ Respondent is not restrained from interfering with the status quo and evidence of the actual occupation, possession and use. The Plaintiff/ Applicant will suffer irreparable loss and damages unless the Defendants/ Respondents are restrained by court order. The balance of convenience tilts in favor of the Plaintiff/ Applicant who is the proprietor and registered owner of the suit plot and has all along been in open and actual peaceful occupation of the suit plot. That it is in the interest of justice that the orders sought be granted. I find that the applicant has shown a prima facie case with a probability of success. I find this application has merit and order that the status quo be maintained pending the hearing and determination of this case.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 12<sup>TH</sup> DAY OF JULY 2018.**

**N.A. MATHEKA**

**JUDGE**