



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

ENVIRONMENT AND LAND DIVISION

CIVIL SUIT NO.29 OF 2018

PAUL KIMUTAI ROTICH.....PLAINTIFF/ APPLICANT

VERSUS

ROBERT KIPKEMOI KORIR.....1STDEFENDANT/RESPONDENT

GILBERT KIPKOECH KORIR....2ND DEFENDANT/RESPONDENT

RULING

Introduction

1. This Ruling is in respect of the Applicant's application dated 31st May 2018 seeking an order of injunction restraining the Plaintiff/Respondents by themselves, agents, servants, employees or otherwise from using, possession, selling or disposing, cultivating, entering upon, remaining, or in any way interfering with the Defendants' use or interests in all land parcel registration number **L.R NO. KERICHO/KIPTUGUMO/1121**, and **KERICHO/KIPTUGUMO/1175** or doing any other act which is prejudicial to the applicants.

2. The application is supported by the Applicant's affidavit sworn on 31st May 2018.

3. The Respondent responded to the application by filing a replying affidavit dated 12th day of July 2018.

Issues for Determination

4. The only issue for determination is whether the Applicant is entitled to an order of temporary injunction.

Analysis and Determination

5. In order for the Court to exercise its discretion in granting injunctive relief the Applicant must meet the conditions set out in the case of **Giella V Cassman Brown & Company Ltd 1973 EA 358**.

6. I have carefully considered the submissions filed by both counsel. I agree with counsel for the Respondent that the Applicant has not established a prima facie case with a probability of success as they are not the registered owners of the suit land. It is clear from the certificates of official search that the suit land is registered in the name of the Plaintiff/Respondent. Even though allegations of fraud have been raised against the Plaintiff, the Court is not required to determine the same at this interlocutory stage.

7. Since the Applicant has failed the first test for the grant of interlocutory injunctions, I need not look at the other tests.

8. Accordingly, I find no merit in the Plaintiff's application and the same is hereby dismissed. The costs of the Application shall be in the cause.

Dated, signed and delivered at Kericho this 30th day of August, 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. Mr. Mwita for Miss Koech for the Respondent
2. N/A for the Applicant
3. Court assistant - Rotich