



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 56 OF 2016

EMILY CHE.....PLAINTIFF

VERSUS

JOSEPH RUTO LESINGO.....1ST DEFENDANT

FRANCIS MUGURE NGUGI.....2ND DEFENDANT

RULING

1. This is a ruling in respect of plaintiff's Notice of Motion dated 25th February 2016, an application pursuant to which the following orders are sought:

1. Spent.

2. Spent.

3. That this honourable court be pleased to order that pending the hearing and determination of this suit, an injunction be issued restraining the Respondents either by themselves, agents, servants and/or employees from entering, trespassing, cultivating, remaining in, wasting, damaging, leasing and/or in any way whatsoever interfering and/or dealing with the plaintiff/applicant's quiet possession of parcel of land known as Title No. 58/Neissuit measuring 2.0 HA.

4. That the costs of this application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff wherein she deposed that she is the registered proprietor of parcel of land known as Nakuru/Neissuit/58 (the suit property). She annexed a copy of a title deed dated 18th February 2013. She further stated that the defendants started laying claim to the suit property sometime in the year 2014 and that they have since moved into it and ploughed it. She thus seeks an injunction as pleaded in the application.

3. The defendants opposed the application through a replying affidavit sworn by the 1st defendant. He deposed that the 2nd defendant is his son-in-law and that the suit property belongs to him as part of 60 acres which was allocated to him by the government. He annexed a copy of an allocation card and a letter from the Provincial Survey Office, Nakuru dated 18th October 2001. He added that he acquired the land in 1996 and used it from that date until the year 2014 when he fenced it. He further deposed that the 2nd defendant has been using the suit property with his permission since the year 2009. He thus urged the court to dismiss the application.

4. The application was argued by way of written submissions. The applicant filed submissions on 9th May 2017 while the respondents filed submissions on 22nd August 2017. I have considered the application, the affidavits and the submissions.

5. In an application for an interlocutory injunction, the applicant must satisfy the test 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 would not be issued if damages can adequately compensate him. Finally, if the court is in doubt as to the answers to the above two tests then the court would determine the matter on a balance of convenience. As was recently 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.

6. From the material placed before the court, I am satisfied that the applicant has demonstrated that she is the registered proprietor of the suit

property. Though the 1st defendant is claiming the suit property, his claim is based on an allocation card. He is not a registered proprietor. Such a claim cannot stand in the face of the applicant's registered proprietorship.

7. As a registered proprietor, the applicant is entitled to the privileges accorded by **Sections 24 and 25** of the **Land Registration Act**. The sections provide as follows:

24. Interest conferred by registration

Subject to this Act—

(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. Rights of a proprietor

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever.....

8. Regarding the applicant's claim that the defendants have laid claim to the suit property and have even moved onto it, all this has been admitted by the 1st defendant who has gone ahead to categorically state that he has permitted the 2nd defendant to utilize it. In the circumstances, I am persuaded that the applicant has established a prima facie case with a probability of success. I do not think that damages can adequately compensate her.

9. In the end, I grant an injunction restraining the defendants by themselves, their agents, servants and/or employees from entering, trespassing, cultivating, wasting, damaging, leasing and/or in any way whatsoever interfering and/or dealing with the plaintiff/applicant's quiet possession of parcel of land known as Nakuru/Neissuit/58.

10. Costs of the application are awarded to the plaintiff/applicant.

Dated, signed and delivered in open court at Nakuru this 27th day of September 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Muriithi for the plaintiff/applicant

Ms Gitau holding brief for Mrs Ndeda for the defendants/respondents

Court Assistant: Gichaba