



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 41 OF 2018**

**CATHERINE JEPKEMEI MENGICH.....PLAINTIFF**

**VERSUS**

**JOSEPH CHEMWETICH CHEBETA.....DEFENDANT**

**R U L I N G**

1. The plaintiff's application dated **16/4/2018** seeks an order of temporary injunction to restrain the defendant, his agents, servants, employees and or all those claiming under him from trespassing upon, using, constructing, continuing to construct and or waste, interfere with **Plot No. 521 Kachibora Trading Centre**, part of original **LR. No. 6614/3 Kiboimo Farm** pending inter partes hearing of the application herein and pending hearing and determination of this suit.
2. In the supporting affidavit and the grounds at the base of the application the applicant avers that she is the lawful owner of Plot No. 521; that the defendant/respondent is the alleged owner of Plot No. 523; that the respondent has trespassed and or encroached and constructed structures on the suit land; that the respondent is in the process of furthering the construction and wasting the suit plot; that the respondent has threatened to harm the applicant; that the respondent has prevented the applicant from using the suit plot; that the applicant is likely to lose her plot and stand to suffer and can not be compensated by way of damages and that the applicant has been in possession, occupation and use for long. The application is supported by the sworn affidavit of the plaintiff.
3. The defendant has opposed the application. In a replying affidavit sworn on **17/5/2018** and filed in court on the same date the defendant states that he is the legal owner of plot number 521 measuring 50x 100 feet at Kachibora; that he purchased the same from one Kipkurui Cheptum; that Kiptum is one of the beneficiaries to the plot; that the list of beneficiaries exhibited by the plaintiff has been disowned by the Kiboimo Farm as a forgery; that in any event the annexure does not reflect the correct order of names and sizes of the parcels against them, that there is no plot that measures 75x100 feet; that his name features in the list but the list wrongly attributes **Plot No. 523** to him; that he has been in occupation of and has developed his parcel since he purchased it in 1998 and no person has claimed it till the plaintiff did yet the applicant is his neighbour.
4. There was a response to these allegations in the form of a further affidavit sworn by the plaintiff on **13/8/2018**. In that further affidavit she disputes the purchase of the suit land; she in the same breath avers that the defendant never cleared the consideration; the issue of forgery of documents features prominently in her further affidavit. However this court can not ascertain the truth or otherwise of such allegations at this stage. They must await the hearing of the main suit.
5. In view of the affidavit evidence of the parties this court has established that there are two plot numbers involved. The plaintiff believes that the plot he is occupying bears one number and the defendant avers that that is the number of her plot. The plaintiff directs the defendant to another plot bearing a different number which she claims belongs to the defendant. In response the defendant points out that going by the evidence produced by the plaintiff the plot he is being directed to belongs to another person and it can not therefore be his.
6. It is evident that the defendant was already in occupation of a parcel of land by whatever number known as at the commencement of these proceedings. If an order is issued as sought by the applicant the same may prevent the defendant from accessing the land and the status quo may be disturbed.
7. There is no sufficient reason given by the plaintiff to warrant the change of status quo for now: by the evidence she has placed on the record she has not demonstrated that she has a prima facie case or that she would suffer irreparable loss that can not be compensated for by way of damages. The application has failed the test espoused in the celebrated case of **Giella Vs Cassman Brown (1973) EA 358**.
8. Consequently, I am of the view that the status quo should be maintained pending the hearing and determination of the main suit.
9. I therefore dismiss the application dated **16/4/2018**. Both parties shall not conduct any development on the land pending the hearing and determination of the main suit. The costs of the application shall be in the cause. The parties shall proceed to fix the main suit for hearing.

Dated, signed and delivered at Kitale on this 24<sup>th</sup> day of **September, 2018.**

**MWANGI NJOROGE**

**JUDGE**

**24/9/2018**

Coram: Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Wangutusi holding brief for Chebii for applicant

N/A for the respondent

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**24/9/2018**