



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC NO. 60 OF 2018

UNILEVER TEA KENYA LIMITED.....PLAINTIFF/APPLICANT

VERSUS

PAUL CHIRCHIR.....1ST DEFENDANT/RESPONDENT

DENNIS CHEPKWONY.....2ND DEFENDANT/RESPONDENT

RULING

Introduction

1. By a Notice of Motion Application dated 18th July 2018 the Plaintiff/Applicant seeks an order of temporary injunction to restrain the Defendants from trespassing or in any other manner, dealing with anything on, and all that Property known as LR No. 9932/4 measuring approximately 20.01 hectares situate in Kericho within Kericho County (the "suit property") pending the hearing and determination of this suit.
2. The application is supported by the affidavit of Winnie Ochieng the plaintiff's legal officer dated 20th July, 2018.
3. In the said affidavit she depones that the Applicant is the registered and lawful proprietor of the Suit Property pursuant to a Grant issued on behalf of the Government of Kenya, and has been in lawful possession and occupation since 20th December 1957. The said Grant was issued to the Applicant by the President of the Republic of Kenya following a Surrender by the Applicant of title I.R No. 16414/5.
4. She further depones that on or about 14th July 2018, the Defendants by themselves and/or by their servants, agents and/or representatives descended on the Suit Property and started cutting down the Applicant's immature trees, some of which they converted into timber and started using the said timber to construct illegal temporary structures on the Suit Property.
5. She depones that the Respondents had, until the status quo order issued on 27th August 2018, continued with their trespass and destruction of the Applicant's Property with reckless abandon thus interrupting the Applicant's quiet possession and enjoyment of the Suit Property. It is alleged that the Respondents have therefore violated and continue to violate the Applicant's right to the protection of its Property as enshrined under Article 40 of the Constitution.
6. The Defendants filed their Replying Affidavit on 31st July 2018. The defendant alleges to be the registered owner of the Suit Property and has attached a certificate of title.

Issue for determination

7. The only issue for determination is whether the Applicant has met the conditions for the grant of an interlocutory injunction.

Analysis and Determination

8. 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** which are as follows:

"First, the applicant must show that he has 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 be compensated by damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience."

A further test for the grant of an injunction has emerged from the approach adopted by Ojwang J (as he then was) in the case of **Amir Suleiman V Amboseli Resort Limited (2004) eKLR** when he relied on the English case of **Films Rover International 1986 3 All ER 772** where the court stated as follows:

“A fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong”

The first issue that the Court must determine is whether the plaintiff has established a prima facie case with a probability of success.

In the case of **Mrao V First American Bank of Kenya Limited (2003) eKLR** Bosire JA (as he then was) stated as follows:

“A prima facie case is... one which on the material presented to the court a 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”

9. The role of a Court faced with an interlocutory application for injunction is not really to make final findings but to weigh the relative strength of the parties' cases. This was so held in the case of **Mbuthia Vs Jimba Credit Corporation Ltd (1988) KLR1**, where the court stated as follows: -

“in an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties' cases,”

10. The Applicant has annexed a certificate of official search which clearly shows that the Applicant is the registered owner of the suit property. The Respondents have not filed any reply.

11. From the material placed before me so far, it is clear that the issue of title is contested. This will only become clear once the case is heard, evidence tendered and subjected to cross-examination. . In the circumstances, and in the interest of justice, the status quo shall be maintained. The status quo here means that both parties shall keep off the suit property until the matter is heard and determined and the issue of ownership settled with finality.

12. The Applicant shall return the Respondents' building materials, firewood and household goods taken away during the unlawful eviction carried out on 27.7.2018. In the event that the said goods have been destroyed, the Applicant shall be at liberty to amend the Plaintiff to include a claim for special damages.

a) The costs of this application shall be in the cause.

Dated, signed and delivered at Kericho this 11th day of September, 2018.

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J.M ONYANGO

JUDGE

In the presence of:

1. Mr. Kiprono for the Defendant/Respondent
2. Miss Ngetich for Mr. Akhambi for the Plaintiff/Applicant
3. Court assistant - Rotich