



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 212 OF 2017

JOSEPH MATHENGE NDERITU.....PLAINTIFF/APPLICANT

=VERSUS=

SAMUEL MWANGI GITAU.....DEFENDANT/RESPONDENT

RULING

1. By a notice of motion dated 23rd March 2017, the plaintiff/applicant seeks orders:-

1. Spent

2. Spent

3. That pending the hearing and determination of this suit an interlocutory injunction be granted against the defendant restraining the defendant by himself and/or acting through his servants and or agents from trespassing, or otherwise howsoever from remaining on or continuing in occupation of and or digging trenches and putting up structures upon and or alienating and/or otherwise dealing or interfering with parcels of land known as P 9161 and P 9162 within Embakasi Ranching company Limited.

4. That the Officer Commanding Station, Ruai be and is hereby directed to ensure compliance of any orders issued herein.

5. That such other orders as this honourable court may find necessary to preserve the suit properties.

6. That costs of this application be provided for.

2. The grounds are on the face of the application and are listed as in paragraph 1 to 5.

3. The application is supported by the affidavit of Joseph Mathenge Nderitu the plaintiff/applicant sworn on the 22nd March 2017 and a further affidavit sworn on the 15th September 2017.

4. Upon being served with the copies of plaint and the notice of motion, the defendant/respondent instructed the firm of M/s Mbiyu Kamau, who filed a Notice of Appointment of Advocates. On 9th April 2017, Mr Maitha who was holding brief for Mr Mbiyu Kamau sought leave to put in a response to the application within 15 days. The said leave was granted. There is a replying affidavit sworn by the defendant/respondent on 7th June 2017. On 29th November 2017, the court directed that the application be canvassed by way of written submissions. The plaintiff/applicant submissions were filed on 19th June 2018.

5. I have considered the notice of motion, the affidavits in support and annexures. I have also considered the replying affidavit, the written submissions of counsel and the authorities cited. The issues for determination are:-

i. Whether the plaintiff/applicant's application meets the threshold for grant of temporary injunction

ii. Who should bear costs?

6. The principles were set out in the preceding setting case of **Giella vs Cassman Brown & Company Limited [1973] EA 358**.

7. In the case of **Mrao Limited vs First American Bank of Kenya Limited [2003] KLR 125** the Court of Appeal stated what amounts to prima facie case.

I am guided by the above authorities.

8. It is the plaintiff's/applicant's case that he is the registered owner of the parcels of land described as plot numbers P 9161 and P 9162 within Embakasi Ranching Company Limited having bought the same from the previous owner one Ngeneka Development 1968 group on 20th February 2012. The plaintiff/applicant has annexed certificates of ownership and are marked as annexures (JMN "1-4").

9. The defendant/respondent on the other hand admits that he was summoned by the OCS Ruai Police Station. This was after the plaintiff/applicant made a report to Ruai Police Station.

10. The plaintiff/applicant has attached documents to show that he is the registered owner of the suit parcel. It is clear that the defendant trespassed on the said parcel. I find that the plaintiff/applicant has established a prima facie case within probability of success at the trial.

11. In the case of **Njenga vs Njenga [1991] KLR 401**, Borire J (as he then was) held that:

“an injunction being a discretionary remedy is granted on the basis of evidence and sound legal principles.”

I am persuaded by the facts presented by the plaintiff/applicant that he deserves the orders sought.

12. I am also guided by Section 26 of the Land Registration Act, 2012 in finding that the plaintiff/applicant's title to the suit properties have not been challenged.

13. I also find that the plaintiff/applicant has demonstrated that he will suffer irreparably if these orders are not granted. It is highly unlikely that he can be compensated by an award of damages. I am guided by the case of **Ooko vs Barclays Bank of Kenya Limited [2002] KLR 394**.

14. The balance of convenience tilts in favour of the plaintiff/applicant who has demonstrated proprietorship rights over the suit parcels.

15. In conclusion I find merit in this application and I grant the orders sought namely:-

a. That an order of temporary injunction be and is hereby issued restraining the defendant by himself and/or acting through his servants and or agents from trespassing, or otherwise howsoever from remaining on or continuing in occupation of and or digging trenches and putting up structures upon and or alienating and/or otherwise dealing or interfering with parcels of land known as P 9161 and P 9162 within Embakasi Ranching company Limited.

b. That the Officer Commanding Station Ruai is hereby directed to ensure compliance of the orders.

c. That costs by this application do abide the outcome of the main suits.

It is so ordered.

Dated, signed and delivered in Nairobi on this 7TH day of NOVEMBER 2018

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court Assistant