

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 823 OF 2017

JOHN MUMBA KATUMO.....PLAINTIFF

VERUS

CHINA ROAD AND BRIDGES CORPORATION LTD.....DEFENDANT

RULING

What is before Court for determination is the Plaintiff's Notice of Motion dated the 27th November, 2017 brought pursuant to section 1A (1), (2), 3A, 63 (c) and (e) of the Civil Procedure Act (Cap 21) and Order 40 Rules 1(a), 3, 4(1) of the Civil Procedure Rules. The Applicant seeks injunctive orders against the Respondent in respect of land parcel number KAJIADO/ KAPUTIEI – CENTRAL/ 741 hereinafter referred to as the ' suit land'.

The Application is premised on the ground that the Plaintiff is the registered proprietor of the suit land that measures 21.85 hectares. A portion of the suit land measuring 7 acres within the Kiu Area, Mashuru Ward, was hived off for the purpose of the Standard Gauge Railway (SGR) construction. In early 2015 the Defendant brought its workers, plant and machinery on the seven (7) acres piece of land and trespassed thereon, without the Plaintiff's consent, by defecating, throwing litter including plastic waste, expired cement and many building materials culminating into wanton destruction of the suit land. The Defendant's employees have also excavated soil and heaped it on the Plaintiff's land. The Defendant has failed to provide adequate sanitary facilities for its employees resulting into dumping of polythene papers, condoms and human waste on the Plaintiff's land leading to death of his livestock. Further, the Defendant through its employees has destroyed the barbed wire perimeter fence surrounding the Plaintiff's land and consequently opened the land to invasion by livestock from various farms and numerous footpaths on the Plaintiff's land. The Defendant has built trenches on the Plaintiff's land and its actions have exposed the Plaintiff to serious economic losses.

The Application is supported by the affidavit of the Plaintiff JOHN MUMBA KATUMO where he reiterates his claim.

The Defendant opposed the Application and filed Grounds of Opposition where it denies carrying out any activities on the suit land which include soil excavation, dumping of waste, condoms as well as human waste. The Defendant insists it has fully provided adequate sanitary facilities for all its employees at the work site. The Defendant contends that the Plaintiff is guilty of material non disclosure by failing to divulge that there were previous proceedings vide Nairobi ELC 1068 of 2015, which the Plaintiff withdrew, where he had sued it over the same subject matter. It reiterates that the suit herein is res judicata and that the Plaintiff has failed to quantify the damages it has suffered.

The Plaintiff filed a further affidavit in reply to the Grounds of Opposition, where he reiterated his claim. The Plaintiff filed his written submissions that I have considered.

Analysis and Determination

Upon consideration of materials presented in respect of the Notice of Motion dated the 27th November, 2017, the only issue for determination is whether the Plaintiff is entitled temporary injunctions pending outcome of the suit. The principles for consideration in determining whether interlocutory injunction can be granted or not is well settled in the celebrated case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**.

In line with this principle, I will proceed to interrogate whether the Plaintiff has demonstrated a prima facie case with a probability of success at the trial.

In the first instance as to whether the applicant has demonstrated a prima facie case with probability of success, I note he is the proprietor of the suit land. He claims the Defendant's employees have interfered with the suit land by dumping both plastic, cement, building and human waste on it which allegations the Defendant has refuted. I however find that since the Plaintiff is the proprietor of the suit land and has not granted permission to the Defendant's employees to trespass thereon, he is entitled to protection of the law. I find that he has indeed established a prima facie case with a probability of success.

On the second principle as to whether the Applicant will suffer irreparable loss which cannot be compensated by way of damages. I note the Plaintiff has alleged the Defendant's employees actions have exposed him to economic loss. In relying on the principles laid in the **Case of Nguruman Ltd. Vs. Jan Bonde Nielsen CA No. 77 of 2012**, where the Court of Appeal held that an applicant must demonstrate that will suffer irreparable injury which cannot be adequately compensated by damages and speculative injuries cannot do. I find that from the facts presented by the Plaintiff, his alleged injuries are not speculative and will proceed to hold that he will indeed suffer irreparable harm which cannot be compensated by way of damages.

On the question of balance of convenience, from the evidence presented by the parties, I find that at this juncture, the balance does tilt in favour of the Plaintiff.

It is against the foregoing that I find the application dated the 27th November, 2017 merited and will allow it.

Dated signed and delivered in open court at Kajiado this 10th day of December, 2018.

CHRISTINE OCHIENG

JUDGE