



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA

LAND CASE NO. 185 OF 2016

PETER BATETA MICHA.....PLAINTIFF / APPLICANT

VERSUS

RUKIA MUKOYA..... 1ST DEFENDANT/ RESPONDENT

JOSEPHAT NDWALA.....2ND DEFENDANT/ RESPONDENT

RULING

The application is dated 20th September 2016 and is brought by way of Notice of Motion under order 40 Rule 1(A), 2 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The Applicant seeks the following orders;

1. That the matter be certified as urgent and be heard exparte in the first instance.
2. That the Honourable Court be pleased to issue an interim injunction against the Defendants their agents, servants, nominees, appointees or anyone acting under their names from trespassing, invading, farming, tilling, cultivating, harvesting sugarcane or in any manner interfering with the Plaintiff's occupation of land parcel number E/WANGA/MALAHA 226 pending the hearing and determination of this application.
3. That the Honourable Court be pleased to issue an injunction against the Defendants their agents, servants, nominees, appointees or anyone acting under their names from trespassing, invading, farming, tilling, cultivating, harvesting sugarcane or in any manner interfering with the Plaintiff's occupation of land parcel number E/WANGA/MALAHA 226 pending the hearing and determination of this suit.
4. That this Honourable Court be pleased to issue any other and or further orders it may deem fit in order to meet the ends of justice and fair play.
5. That the O.C.S Shianda Police Station be directed to assist and ensure compliance by the Respondents.
6. That the cost of this application be awarded to the Applicant.

The Plaintiff/ Applicant submitted that he is the legal administrator of the Estate of Late Okumu Opolo and Mija Opila who are joint registered owners of the said land parcel number E/WANGA/MALAHA 226. That the 1st Respondent has unlawfully invaded a portion of the said parcel of land and has illegally leased a portion to the 2nd Respondent. The Respondents are therefore, trespassers, strangers and

encroachers who have no right to cultivate and or harvest any farm produce from the said premises. That the Applicant has been appointed by the Bagimba clan to be the appointee and or nominee to resolve land disputes relating to the said parcel of land and has annexed the minutes of the said meeting.

This court has considered the Applicant's submissions. The application being one that seeks an injunction, has to be considered within the principles set out in the case of **GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358** and which are:-

- 1. The applicant must show a prima facie case with a probability of success at the trial***
- 2. The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,***
- 3. If in doubt, the Court will decide the application on a balance of convenience.***

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a Court of equity.

The Court has perused the application and supporting affidavit of the Plaintiff together with the annexure. The Defendant was served but failed to attend court or file any grounds of opposition. It is the plaintiff's contention that he was appointed the legal administrator of the Estate of Late Okumu Opolo and Mija Opila who are joint registered owners of the said land parcel number E/WANGA/MALAHA 226 by the Bagimba clan. I find that this appointment cannot stand in the absence of letters of administration as required by law. The Applicant has failed to establish a prima facie case. This application has no merit and it is dismissed with costs

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 28TH FEBRUARY 2017.

N. A. MATHEKA

JUDGE