

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 5 OF 2017

LINET CHEPKEMOI MASAI.....PLAINTIFF

VERSUS

DENNIS MASAI.....1ST DEFENDANT

JOHN BARASA MASAI..... 2ND DEFENDANT

R U L I N G

The applicant brought an application dated **9/1/2017** seeking orders of temporary injunction to restrain the respondents and their agents from entering, trespassing on or ploughing, leasing, selling, wasting, damaging, alienating, charging and/or in any other way interfering with the plaintiff's quiet possession of her land parcels **Kiminini/Kinyoro Block 2/Chumek/52, 53, 58, 59, 60 and 61**.

On the 2nd February, 2017 when the matter came up before court I issued an interim order of injunction against the respondents restraining them from any dealings with the subject land pending the hearing of the application interpartes. At the same time I ordered that the application be heard interpartes on 14/2/2017.

When the application came up for hearing on 14/2/2017 the defendants were absent. They had also filed nothing in response to the application. Upon satisfying myself that the service of the hearing notice upon the defendants was properly effected, the hearing proceeded.

The applicant states that she is the registered proprietor of the parcels of land known as **Kiminini/Kinyoro Block 2/Chumek/52, 53, 58, 59, 60 and 61**. The copies of title deeds evidencing ownership are annexed to the affidavit sworn by the applicant in support of the application. In addition there is annexed to the said affidavit annexure "LCM7" which is a copy of an agreement between the applicant and two vendors, **Gerald Nathaniel Kalya** and **Wilson Kiplagat Kalya** in which the vendors agreed to sell the portions of land referred to hereinabove.

In the case of **Giella -vs- Cassman Brown** the principles that govern issuance of injunction by a court of law were stated. First, the applicant must demonstrate that he has a prima facie case with probability of success. Secondly, the applicant must prove that he will in the absence of the injunction suffer irreparable damage which may not be adequately compensated by way of an award of damages and if the court is in doubt, orders should be made having regard to the balance of convenience.

I have no doubt that in a case like this one where the applicant has exhibited copies of documents in evidence of proprietorship of land and the respondents have failed to appear or file their response to the application for injunction the applicant has demonstrated that she has a prima facie case with probability of success. However there is no proof of possibility of damage that may not be remedied by way of an award of damages against the respondents. Nevertheless I find that it would not be just to allow the respondents to continue dealing with the subject land when they have not even put up any opposition to the application. The balance of convenience therefore tilts in favour of the applicant. For these reasons there shall be a temporary injunction against both respondents restraining them from in any way interfering with the land parcels known as **Kiminini/Kinyoro Block 2/Chumek/52, 53, 58, 59, 60 and 61** pending the hearing and determination of this suit.

Costs of this application shall be in the cause.

Dated, signed and delivered at Kitale on this 27th day of **February, 2017**.

MWANGI NJOROGI

JUDGE

In the presence of:

Mr. Ngeywa.

Court Assistant - Isabellah