



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**E&L NO. 50 OF 2017**

**EMMANUEL RUTO KIPROP.....PLAINTIFF**

**-VERSUS-**

**HENRY YATURS KIPCHUMBA & 4 OTHERS.....DEFENDANT**

**RULING**

The Plaintiff is the registered proprietor of all that parcel of land known as **LR No. Baringo/Ravine 102/456** measuring four (4) acres within Baringo County (hereinafter referred to as “the suit property”).

The Plaintiff filed this suit against the defendant on 9<sup>th</sup> February, 2017; seeking amongst others, an order for a permanent injunction restraining the defendants from entering, alienating, constructing, transferring the suit property; a declaration that the plaintiff is the absolute and indefeasible proprietor of the suit property.

The Plaintiff filed together with the Plaint, a Notice of Motion under Certificate of Urgency dated 9<sup>th</sup> February, 2017 seeking for a temporary injunction restraining the defendants from entering, alienating, constructing, transferring, leasing, demolishing, destroying the plaintiff’s house in the suit property pending the hearing and determination of this suit. The Plaintiff’s application was certified as urgent on 9<sup>th</sup> February, 2017 whereby interim orders were granted and the Plaintiff ordered to serve the application for inter-partes hearing on 21<sup>st</sup> February, 2017. The Plaintiff served the application and an affidavit of service filed on 21<sup>st</sup> February, 2017. I notice that the service was effected on 20<sup>th</sup> February, 2017 from the affidavit of service filed in court.

The matter came up for hearing on 21<sup>st</sup> February, 2017 and counsel for the Plaintiff/Applicant submitted that the defendants were served and there being no response to the application urged the court to confirm the interim orders that were granted on 9<sup>th</sup> February, 2017.

He relied on the grounds in support of the application, supporting affidavit of the plaintiff and the annexures thereof.

In the supporting affidavit, the Plaintiff avers that he is the registered proprietor of all that parcel of land known as **LR No. Baringo/Ravine 102/456** measuring four (4) acres within Baringo county. He annexed a copy of a Sale Agreement dated 28<sup>th</sup> June 2007, a copy of a title deed in his name dated 6<sup>th</sup> May, 2008, a copy of official search certificate to confirm the status of the title and a demand letter to the defendant.

The Plaintiff further averred in his affidavit that the Defendants have been destroying his fence, breaking into his house, grazing their animals on the suit property.

The Plaintiff claims that as a result of the Defendants' trespass aforesaid, the Plaintiff has been inconvenienced and has been deprived of the right to quiet possession and peaceful enjoyment of the suit property.

The principles of law on the grant of temporary injunctions are settled. The requirements for the grant of a temporary injunctions are stated in **GIELLA –VS- CASSMAN BROWN & CO. LTD (1973) E.A 358** and these are that the applicant must establish a *prima facie* case, and that he or she would suffer irreparable loss which may not be compensated by an award of damages. If the court finds that the two requirements are not satisfied, it may decide on a balance of convenience.

What constitutes a *prima facie* case? The Court of Appeal in **MRAO LTD –VS- FIRST ACREVIEAR BANK OF KENYA LTD & 2 OTHERS (2003) eKLR** stated as follows:

***“a prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case’. It is a case 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.”***

The Plaintiff has placed evidence before this court which shows that the Plaintiff is the registered proprietor of the suit property. It is the Plaintiff's contention that the defendants' continued trespass on the suit property is denying him quiet possession and enjoyment of his property. In the absence of any challenge to the validity of Plaintiff's title and the claim that the Defendants' have trespassed on the suit property, I am convinced that the Plaintiff has established a *prima facie* case with a probability of success against the Defendants since the Plaintiff is the registered proprietor of the suit property therefore is entitled to quiet possession and enjoyment of the same. I am also satisfied that the Plaintiff will suffer irreparable harm if the orders sought are not granted.

Having considered the above, I accordingly allow the Plaintiff's application dated 9<sup>th</sup> February, 2017.

Costs of the application be in the cause.

**DATED AND DELIVERED THIS 23<sup>RD</sup> DAY OF FEBRUARY 2017**

**M. A. ODENY**

**JUDGE**