



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

E.L.C NO. 184 OF 2016

WAMAMU UNITED COMPANY LIMITED PLAINTIFF

-VERSUS-

JOSEPH GITHIRA MUCHIRI 1ST DEFENDANT

JOSEPH MUTHUA WACHIRA 2ND DEFENDANT

GIDEON MAINA WAGEKE 3RD DEFENDANT

CHARLES MUNUHE MUGWERU 4TH DEFENDANT

RULING

1. The plaintiff company filed this is application vide a Notice of Motion dated **9th August, 2016** seeking that the defendants, their agents and/or servants be restrained from interfering with the plaintiff's quiet use and possession of **LR No 3277/4 Pesi Laikipia** (the suit property) pending the hearing and determination of the suit.
2. The grounds on which the application is premised are also contained in the supporting affidavit sworn by **Duncan Wamai Mugwe**, one of the directors of the plaintiff Company, on **16th August, 2016**. In the said affidavit, he depones that the defendants have trespassed on about 30 acres of the suit property; that they are committing acts of waste, are hostile to agents of the company and potential buyers of the suit property; that the plaintiff company intends to sell off the suit property to clear its debt but this cannot happen due to the defendant's actions.
3. The application was unopposed. The defendants were duly served with the application and hearing notice but none of them filed a response or even appeared for the hearing of the application.
4. The application was heard on 28th October, 2016 in the absence of the defendants. Mr. Kingori submitted that the defendants were in occupation of 80 acres out of 800 acres of the suit property. He submitted that the plaintiff intended to sell off the 720 acres which were vacant to pay of debts but were unable to do so because the defendants were hostile to any potential buyer who visited the land. He further submitted that the plaintiff had no objection if the defendants continued occupying the 40 acres they currently occupied pending the hearing of the main suit.
5. This being an application for interlocutory injunction, the court is guided by the principles as enumerated in the case of **Giella v Cassman Brown [1973] E.A 358**, that:

- (i) The applicant must show that he has a *prima facie* case with a probability of success.
- (ii) Damages will not be an adequate remedy and
- (iii) Should the court be in doubt, it will determine the matter on a balance of convenience.

6. Whereas the plaintiff has exhibited a copy of a title deed, I note that in that title deed, the plaintiff is not named as the registered owner of the suit property. The suit property is registered in the name of Ruare Ranch Ltd. The Plaintiff appears to be in some sort of affiliation with the registered owner claiming a portion of 800 acres of the suit property. This relationship is found in the minutes annexed to the supporting affidavit where at a special general meeting held by Ruare Ranch Company Ltd on 9th April, 1997 (paragraph 30), the plaintiff purchased some land from Ruare Ranch Company. From these minutes, it is not clear how many acres of land the plaintiff purchased and no other document is annexed to clarify the said purchase or support this position. I also find it strange that the plaintiff is willing to allow the defendants whom it describes as “trespassers” to continue occupying 40 acres of the suit property pending the hearing and determination of the suit.

7. I have considered the evidence before me and submissions by counsel for the plaintiff. I am not satisfied that the plaintiff has established a *prima facie* case as defined by **Bosire JA** in the case of **Mrao Ltd v First American Bank Kenya Ltd & 2 Others (2003) KLR 125**, that their case “.....is more than an arguable case.” I decline to grant the prayers sought by the plaintiff and I dismiss the application with no orders on costs.

Dated, signed and delivered at Nyeri this 25th day of January, 2017.

L N WAITHAKA

JUDGE

In the presence of:

N/A for the applicants

N/A for the respondents

court clerk - Esther