



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC CASE NO. 147 OF 2014**

**KALONDU MULWA MBAVI.....PLAINTIFF**

**VERSUS**

**SIMON MUTUA KIMANTHI.....DEFENDANT**

**RULING**

1. By a Complaint dated 30<sup>th</sup> October, 2014, the Applicant filed the instant suit on 30<sup>th</sup> October, 2014 seeking for eviction and injunctive reliefs against the Defendant/Respondent.
2. Contemporaneously with the filing of the Complaint, the Applicant filed a Chamber Summons dated 30<sup>th</sup> October, 2014 for a temporary injunction and an order of eviction against the Respondent.
3. The Application is premised on the grounds that the Applicant is the registered owner of Syokisinga/Kyua plot No. 688 (*herein after referred to as the suit land*). According to the Applicant, the Respondent has trespassed therein and settled on the land with members of his family without his permission.
4. The Respondent has filed Defence dated 10<sup>th</sup> November, 2014 and a Replying Affidavit that he swore on 10<sup>th</sup> November, 2014. The Respondent has averred that he bought a portion of the suit land way back in the year 2008 and put up a permanent building where he lives with his family.
5. The parties agreed to canvass the Application by way of written submissions which they filed and exchanged.
6. The Applicant's case is that she borrowed money from the Respondent but she defaulted repayment of the same prompting the Respondent to enter into the suit land and settle therein with his family. She avers that she never allowed him on the land.
7. The Plaintiff denied ever selling a portion of the suit land to the Respondent. She deposed that only Kshs. 190,000/= was advanced to her as a loan but not as the purchase price.
8. The Respondent deposed that he bought two portions of the suit land measuring 1025X135ft by 972X600ft and another 186X139ft by 166X91ft; that he took possession and built a permanent home which he uses and that there is written agreement to that effect. According to the Respondent, consideration paid was Kshs. 305,000/= which was fully paid. The Respondent annexed on his Affidavit photographs to show the developments undertaken on the disputed portions of land.

9. In her submissions, the Applicant relied on the case of ***Giella vs. Cassman Brown Co. Ltd (1973) E.A 358*** and submitted that she has met the threshold for the grant of a temporary injunction in terms of the principles set therein.

10. She submitted that a *prima facie* case with a probability of success has been disclosed as defined in the case of ***Mrao vs. First American Bank (K) Ltd & 2 Others (2003) KLR 125***. This is because she is the registered owner of the suit property and in terms of Section 26(1) of Land Registration Act, the registration of title is *prima facie* evidence of proprietorship. The Plaintiff further submitted that an agreement of sale of land is null and void in the absence of the consent of the Board.

11. On the second limb of the ***Giella case***, the Applicant submitted that she will suffer irreparable harm because she is being deprived of family land and that the Respondent will continue to develop the suit land to her detriment.

12. The Respondent submitted that he occupies and utilizes the portions that he bought and that he has put up a permanent home since 2008. According to the Respondent, the said occupation was sanctioned by the Applicant.

13. After going through the submissions, the pleadings and the parties' affidavits, the issue arising is whether the Applicant has met the threshold for the grant of the orders sought.

14. It has not been denied that the Applicant is the registered owner of the suit land. It is also not in dispute that the Respondent and his family are in occupation of the portions of the suit land and has built a permanent home thereon. The Applicant has admitted that she was loaned Kshs. 190,000/= which she has not been able to repay.

15. The Applicant has not stated why she never sought to stop the Respondent from entering and developing the disputed portions of the suit land. On the *prima facie* basis, it would appear that there was a sale transaction which gave rise to the Respondent taking possession of the land. Whether that sale was lawful or not cannot only be confirmed after trial.

16. At the moment, it is the Respondent who is in possession of the land with extensive developments in what he claims to have commenced in 2008.

17. The material that has been placed before the court discloses a *prima facie* case with chances of success.

18. This court is of the opinion that the situation prevailing on the ground should be preserved pending the hearing and determination of the suit. For those reasons, the court makes the following orders:

***a. The status quo prevailing on portions occupied by the Respondent be maintained until the suit is heard and determined.***

***b. Costs be in the cause.***

**DATED AND DELIVERED AT MACHAKOS THIS 31<sup>ST</sup> DAY OF MARCH, 2017.**

**OSCAR A. ANGOTE**

**JUDGE**