



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
ENVIRONMENT AND LAND DIVISION
ELC CASE NO.552 OF 2017

JOHN MACHARIA CHEGEAPPLICANT /PLAINTIFF

VERSUS

MARY KATHOMI RIUNGU.....1ST DEFENDANT

LAND REGISTRAR, KAJIADO.....2ND DEFENDANT

RULING

The application before this court is dated the 22nd March, 2017 brought pursuant to Order 40 Rule 7 & Order 51 Rule 1 of the Civil Procedure Rules and Section, 1A and 3A of the Civil Procedure Act and all the enabling provisions of the law.

The Plaintiff is seeking for the following prayers:

1. The Honourable Court be pleased to grant orders restraining the 1st Defendant from further encroachment onto, trespass upon and damage to the whole or part of the Plaintiff's property comprised in LR. No. KAJIADO/KAPUTIEI -NORTH/3588.
2. The Honourable Court be pleased to grant orders restraining any person whatsoever from encroaching, trespassing, disposing or dealing in any manner with the property comprised in L.R. No. KAJIADO/KAPUTIEI - NORTH/3588 until this matter is heard and determined.m
3. The Honourable Court be pleased to grant orders compelling the 2nd Defendant to produce survey map with clear demarcations indicating the acreage and the boundary of property comprised in LR. No. KAJIADO/KAPUTIEI - NORTH/3588.
5. The costs of this application be in the cause.

The application is premised on the following grounds:

1. The Plaintiff is the registered proprietor of property comprised in LR. No. KAJIADO/KAPUTIEI - NORTH/3588 and has the full ownership rights over the property.
2. On 19th September, 2016 the 1st Defendant was summoned by the Land Registrar Kajiado in the Boundary dispute deliberations on 19th October, 2016 to resolve the dispute but the 1st Defendant failed to show up.

3. On the 28th October, 2016 the 1st Defendant was summoned by the Land Registrar of Kajiado to participate in the Boundary dispute deliberations on the 19th November, 2016 to resolve the dispute but the 1st Defendant failed to show up.
4. The 1st Defendant encroachment of the land subject matter is a threat to the Plaintiff's rights of ownership and enjoyment over the property.
5. The 1st Defendant encroachment of the land subject matter has and continues to cause the Plaintiff irreparable damage/loss.
6. The 2nd Defendant be ordered to produce map of the suit property illustrating boundaries and beacons so as to assist this Honourable court in resolving this suit.
7. It is in the interests of justice that the 1st Defendant be ordered to stop encroaching on land subject matter until this matter is heard and determined by this Honourable Court.
8. The 1st and 2nd Defendants will suffer no harm if the Orders sought by the Plaintiff are granted by this Honourable Court.

The application is supported by the affidavit of JOHN MACHARIA CHEGE who is the plaintiff herein. He avers that he is the registered proprietor of LR. No. KAJIADO/KAPUTIEI - NORTH/3588 having lawfully purchased it from one JOSEPHINE NYAMBURA THUO. He claims the 1st Defendant has unlawfully encroached on some sections of this land and this is interfering with the enjoyment of his ownership rights over the suit land. The said encroachment is causing him irreparable loss and damage.

The 1st and 2nd Defendants were served, and there is an affidavit of service filed in the court file. I note from the affidavit of service that both Defendants were duly served but they all failed to enter appearance nor file replying affidavits. The application hence proceeded unopposed.

The Plaintiff was represented by Mr. Sabula who stated that he was ready to only proceed with the application as against the 1st Defendant but intended to withdraw the case against the 2nd Defendant and enjoin the Kajiado County Land Surveyor instead. Mr. Sabula stated that the Plaintiff and the 1st Defendant's land are bordering one another. The 1st Defendant has encroached on part of the Plaintiff's portion of the land and is on the verge of constructing a permanent structure thereon. The boundary dispute had been reported to the Kajiado Land Registrar and other Local authorities and the 1st Defendant invited for several meetings which she declined to attend. The Plaintiff who is visually impaired claims he has suffered loss and damage as a result of the encroachment. Mr. Sabula argued that the Plaintiff deserves to enjoy his rights as the registered proprietor of the land irrespective of his medical conditions. He said he is only seeking prayers 1 and 2 of the application dated 22nd March, 2017.

Having carefully considered the instant Notice of Motion, supporting affidavit including the annexures, the pleadings filed and the written statements and the relevant laws, the Court makes the following findings:

The principles of granting interlocutory injunction were settled in the case of **Giella vs. Cassman Brown & Co. Ltd (1973) E.A 358** where the court held inter alia that for an injunctive order to be granted the Applicant has to demonstrate it has prima facie case with a probability of success, and it stands to suffer irreparable loss or injury which cannot adequately be compensated in damages. If the court is in doubt, it should decide the application on a balance of convenience.

In this instance the Plaintiff has demonstrated a prima facie case as he is the proprietor of land LR. No. KAJIADO/KAPUTIEI NORTH/3588 and that the 1st Defendant has encroached on his land. No evidence was offered to rebut the allegations of encroachment. Despite seeking interventions in several offices, the 1st Defendant has declined to attend meetings and further failed to come to court nor file a replying affidavit to oppose the current application.

The court hence allows prayers 1 and 2 of the instant motion as against the 1st Defendant, pending the hearing and determination of the suit. The costs will be in the cause.

Dated, signed and delivered at Kajiado this 11th May, 2017

CHRISTINE OCHIENG

JUDGE

REPRESENTATION:

Court Clerk –Mpoye

No attendance for plaintiffs

No attendance for defendants