



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA**

**ELC CASE NO. 76 OF 2017**

**EVANS SABARI AKWIDAYA.....PLAINTIFF/APPLICANT**

**VERSUS**

**PAUL ISIAHO.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**ALEXANDER SERU LUMITI .....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**MERCELINE ANJELI ISIAHO.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

The application is brought under Order 40 and rules 2 (1) (2), 3 (1) (2), 4 (1) (2)(3) (5) of the Civil Procedure Rules 2010 praying for the following orders:-

1. That this application be heard ex parte in the 1<sup>st</sup> instance.
2. That the honourable court be pleased to issue orders restraining the defendant/respondents either by themselves or through their agents assigns and or representatives from entering, clearing and cultivating land parcel number IDAKHO/SHISESO/815 pending the hearing and determination of this application inter-parties.
3. That the honourable court be pleased to issue orders restraining the defendant/respondents either by themselves or through their agents, assigns and or representatives from entering, clearing and or cultivating land parcel number IDAKHA/SHISESO/815 pending the hearing and determination of this suit.
4. That the costs of this application be provided for.

The Applicant's submissions are that, the plaintiff/applicant is the registered owner of land parcel number IDAKHO/SHISESO/815. The defendants/respondents have trespassed into the plaintiff's land and started clearing and cultivating the same. That the defendant/respondents have become violent to the plaintiff/applicant when they are told to stop their illegal activities. That the defendant/respondents have persisted with their acts of trespass despite intervention from the local administration. The actions of the defendant/respondents may result in violence and bloodshed unless they are stopped by the court. That it is in the interest of justice and public tranquility that the above orders be granted.

The Application is supported by the affidavit of **EVANS ABBARI AKWIDAYA**, the plaintiff/applicant herein. He states that he bought land parcel number IDAKHO/SHISESO/815 from the registered owner in the year 2013 (Annexed is an agreement marked ESA1). That the registered owner obtained consent and

executed all transfer documents and he was issued with a title deed (Annexed is a copy marked ESA2). That he is the current registered owner of the parcel of land (Annexed I current search marked ESA3). That in the course of the month of February, 2017 the defendant/respondent trespassed into his parcel of land and started cultivating the same. The defendant/respondents are relatives of the seller and they are not entitled to enter into his parcel of land. That the defendant/respondents have their own parcel of land which they are entitled to occupy and cultivate. That the defendants/respondents have persisted in their illegal activities despite intervention from the local administration. That the defendant/respondents have become hostile to the Applicant and they are ready to have physical confrontation with him. That the defendant/respondents actions may result in violence and bloodshed unless they are stopped by the honourable court. The Applicant prays that the defendant/respondent be stopped from trespassing into his parcel of land and doing any cultivation and developments therein pending the hearing and determination of this suit. The Respondents were served and failed to attend court and have not filed any papers in opposition.

This court has considered the Applicant's submissions and the supporting affidavit therein. The application being one that seeks injunctions, has to be considered within the principles set out in the case of GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358 and which are:-

- 1. The applicant must show a prima facie case with a probability of success at the trial**
- 2. The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,**
- 3. If in doubt, the Court will decide the application on a balance of convenience.**

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a Court of equity.

The Applicant's submissions are that, the plaintiff/applicant is the registered owner of land parcel number IDAKHO/SHISESO/815. The defendants/respondents have trespassed into the plaintiff's land and started clearing and cultivating the same. He states that he bought land parcel number IDAKHO/SHISESO/815 from the registered owner in the year 2013 (Annexed is an agreement marked ESA1). That the registered owner obtained consent and executed all transfer documents and I was issued with a title deed (Annexed is a copy marked ESA2). That he is the current registered owner of the parcel of land (Annexed current search marked ESA3). That in the course of the month of February, 2017 the defendant/respondent trespassed into his parcel of land and started cultivating the same. The Application is not opposed. I find that the Applicant has shown a prima facie case with a probability of success at the trial. He had established through documentary evidence that he is the registered owner of the said parcel of land. The applicant has shown that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages as the defendants/respondents have trespassed into the plaintiff's land and started clearing and cultivating the same. I find this application has merit to that extend and grant prayer 3 of the application as follows;

1. That the honourable court be pleased to issue orders restraining the defendant/respondents either by themselves or through their agents, assigns and or representatives from entering, clearing and or cultivating land parcel number IDAKHA/SHISESO/815 pending the hearing and determination of this suit.
2. Costs of this application to be in the cause.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 10<sup>TH</sup> DAY OF MAY 2017.**

**N. A. MATHEKA**

**JUDGE**