



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

E. L. C.C. NO. 318 OF 2017

SAMSON ONYANGO MATINDE.....PLAINTIFF/APPLICANT

VERSUS

GORDON JUMA MIGWAMBO.....DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated 3/4/2017, the Plaintiff/Applicant in person seeks against the Defendant that the application be certified as urgent, temporary injunction and costs of the suit in respect of the suit land **L. R. West Kasipul/Konuon'ga/840**. The application is supported by five (5) grounds among them, that the Applicant is the legal administrator of the suit land.
2. The Defendant was duly served on 14/6/2017 by an Affidavit of service sworn on 22/6/2017 by a process server, **Gerald Kabutu Kiunga**. There is no reason for his absence.
3. I note that the prayer number two (2) sought in the Notice of Motion is for a temporary injunction. The Plaintiff has temporary permanent injunction as one of the reliefs sought therein. I am aware that the Plaintiff / Applicant is unrepresented and there is need for him to amend the plaint.
4. I am aware of **Section 100 Civil Procedure Act Cap 21** on the Courts general power to amend. I am conscious of right to fair hearing under **Article 50(1) Constitution, 2010 as well as Article 159(2) (a) (b) & (d) Constitution, 2010** that justice should be administered to all, without delay and without undue regard to procedural technicalities.
5. I have also noted the Principles for the grant of a temporary injunction and interlocutory orders as governed by **Order 40 Civil Procedure Rules, 2010** and the holding in **Giella vs= Cassman Brown (1973) EA 358**. In the circumstances, I am satisfied that the Plaintiff/Applicant has not met the threshold of the **Giella case (I bid)**.
6. I accordingly decline to grant prayer 2 sought in the Notice of Motion application.
7. In the interest of justice, I direct as herein under:-

(a) The Plaintiff /Applicant may amend, file and serve the plaint on the Defendant/Respondent within the next thirty (30) days from the date hereof.

(b) The Defendant / Respondent to file defence within thirty (30) days from the date of service and serve the same within the same period.

(c) Mention 20/9/2013 for pre-trial directions before the Deputy Registrar Migori.

DELIVERED, DATED and SIGNED at MIGORI this 27th day of June 2017.

G. ONG'ONDO

JUDGE

In the presence of:

The plaintiff / applicant

Tom Maurice , Court Assistant

G. ONG'ONDO

JUDGE