

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 463 OF 2016

WIN NJOKI KORI.....PLAINTIFF

VERSUS

JAMES KIANJA KARANJA.....1ST DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 22nd November 2016. The application is brought under Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules and seeks the following orders:

1. *(Spent)*.

2. *(Spent)*.

3. *THAT pending the hearing of this suit, the respondent, whether acting in person, by proxy, through its agents, servants, employees, officer or any other person acting at its behest, be restrained by way of a permanent injunction from entering, remaining, constructing, trespassing, cultivating, occupying and/or in any manner whatsoever interfering with the plaintiff's quiet occupation and utilization of the parcel of land adjacent to GILGIL/GILGIL 1/3950.*

2. The application is supported by an affidavit sworn by the plaintiff on 22nd November 2016. The plaintiff deposes that she is the registered owner of all that parcel of land comprised in Gilgil/Gilgil Block 1/3950. She accuses the defendant of destroying her crops and digging water ways which have complicated the plaintiff's efforts to manage floods. She further accuses the defendant of diverting sewage water to make his farm without considering the surrounding community. The plaintiff thus urges the court to grant the injunction sought.

3. The defendant opposed the application through a replying affidavit sworn on 9th March 2017. He deposes that the plaintiff is his neighbour and denies ever trespassing on the plaintiff's plot. He denies the plaintiff's contention that she owns Gilgil/Gilgil Block 1/3950 and points out that the aforesaid plot does not exist because it was subdivided by the plaintiff into new plots which the plaintiff sold to third parties.

4. I have considered the application, the affidavits filed by both parties and submissions by counsels for both parties. The plaintiff's case as pleaded in the plaint is that she owns the parcel of land known as Gilgil/Gilgil Block 1/3950. The application before court also seeks an injunction in respect of the parcel of land adjacent to the said property. Though the plaintiff exhibited a copy of certificate of official search which shows that she owned Gilgil/Gilgil Block 1/3950 as at 29th January 2014, the copy of title deed exhibited by the plaintiff is in respect of a totally different property being Gilgil/Gilgil Block 1/34615 (Kekopey). Mr. Githui, learned counsel for the plaintiff explained in his submissions that the suit property was subdivided and that the suit in fact concerns Gilgil/Gilgil Block 1/34615 (Kekopey). He referred to a further affidavit said to have been filed by the applicant on 29th March 2017. I have however not seen the said further affidavit on the record. Nevertheless, Mr. Githui's contention seems to support the allegation by the defendant that Gilgil/Gilgil Block 1/3950 does not exist.

5. For an application for an interlocutory injunction to succeed the applicant must establish a prima facie case with a probability of success. This basically means that the applicant's case as pleaded in the plaint

must be one that has a prospect of success. In the present case the applicant's case as pleaded in both the plaint and the application is that she owns Gilgil/Gilgil Block 1/3950. It now turns out that in fact the suit property as described in the plaint no longer exists. Unless the plaint is amended, the plaintiff's case as currently pleaded has no prospect of success. Further, the plaintiff seeks an injunction in respect of "the parcel of land adjacent to GILGIL/GILGIL 1/3950". It is not possible, in view of the manner in which both the application and plaint are framed, to determine with certainty which particular parcel of land is referred to. Needless to state, court orders should not be issued in vein.

6. In view of the foregoing I have no hesitation in finding, as I now do, that the plaintiff has failed to establish a prima facie case with a probability of success. Accordingly, Notice of Motion dated 22nd November 2016 is dismissed. Costs to the defendant.

7. Dated, signed and delivered in open court at Nakuru this 22nd day of June 2017.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistant: Gichaba