



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 75 OF 2014**

**PHENAS AMBASI MILITSA :::::::::::::::::::::PLAINTIFF/APPLICANT**

**VERSUS**

**FRANCIS SIKOSO :::::::::::::::::::::DEFENDANT/RESPONDENT**

**RULING**

This application is dated 13<sup>th</sup> March 2014 and is brought under Section 3A, 63 (c) & e of the Civil Procedure Act Cap 21 of the Laws of Kenya Order 40 rule 1, 2, 3, 4, & 5 of the Civil Procedure Rules and seeks the following orders;

1. THAT this honourable court be pleased to certify this matter as urgent and heard exparte at the first instance.
2. THAT this honourable court be pleased to issue an order of injunction restraining the defendant by himself, his officials, agents and/or servants from cultivating, building, leasing, charging and/or hearing and determination of the main suit.
3. THAT the costs of this application be provided for.

The application is based on the grounds therein and the affidavit of the applicant. The grounds are that the applicant is the registered owner of the suit property. In the year 2009 the defendant/respondent trespassed into and settled into the land. That any efforts to have the defendant leave the suit property have been fruitless. The defendant/respondent has no legal justification to continue developing the suit property at her expense (applicant) and that of her family.

The applicant submitted that she is the registered owner of land parcel number KAKAMEGA/SOY/1413 measuring 0.3 HA. (annexed and marked as PAM 1 is a copy of the title deed). That she bought this land from one JOHN SIMIYU MURUNGA who has since died in the year 2005. (annexed and marked PAM 2 is a copy of the land sale agreement.). That after entering into the agreement, they commenced the process of transferring the land into her name and the seller applied for consent to the Land Control Board in February, 2008 which consent was granted on 6<sup>th</sup> March, 2013 (annexed and marked as PAM 3 is a copy of the consent from the Land Control Board.). that she did not live in the said parcel since she had a house elsewhere. That in 2009, she learnt that the defendant had trespassed into the land and settled there. That efforts to have this matter settled amicably has been fruitless and the defendant continues to live on her land and has actually made developments therein. The defendant was served and failed to attend court and the matter was unopposed and proceeded exparte.

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 submitted that she is the registered owner of land parcel number KAKAMEGA/SOY/1413 measuring 0.3 HA. (annexed and marked as PAM 1 is a copy of the title deed). That she bought this land from one JOHN SIMIYU MURUNGA who has since died in the year 2005. (annexed and marked PAM 2 is a copy of the land sale agreement.). That after entering into the agreement, they commenced the process of transferring the land into her name and the seller applied for consent to the Land Control Board in February, 2008 which consent was granted on 6<sup>th</sup> March, 2013 (annexed and marked as PAM 3 is a copy of the consent from the Land Control Board.). That she did not live in the said parcel since she had a house elsewhere. That in 2009, she learnt that the defendant had trespassed into the land and settled there. That efforts to have this matter settled amicably has been fruitless and the defendant continues to live on her land and has actually made developments therein. I find that the applicant has shown a prima facie case with a probability of success at the trial. The applicant has also shown that unless the order is granted, she will suffer loss which cannot be adequately compensated in damages as the respondent has now trespassed on the land. I find that the application has merit and grant it on the following terms;

That an order of temporary injunction do issue restraining the defendant by himself, his officials, agents and/or servants from cultivating, building, leasing, charging and/or hearing and determination of the main suit. Cost of this application to be in the cause.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 21<sup>ST</sup> DAY OF JUNE 2017.**

**N.A. MATHEKA**

**JUDGE**