



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT KAKAMEGA

ELC CASE NO. 113 OF 2016

JEREMIAH AHUNA AMULIOTO.....PLAINTIFF/APPLICANT

VERSUS

RAPHAEL OMULANDA.....DEFENDANT/RESPONDENT

RULING

This application dated 23rd day of March 2016 and is brought under order 40 Rules 1 (a, b), 4 (1,4) order 51 rules 1, 3, 4, 5, 7 and (10) 2 of Civil Procedure Rule 2010, and seeks the following orders;

1. THAT, this application be certified as urgent.
2. THAT pending the hearing and determination of this application interparties this honourable court be pleased to grant an order of interim injunction restraining the defendant or their servants' agents or any other person assigned or with their authority to interfere with the land parcel No. E. BUNYORE/EMAKUNDA/1223.
3. THAT pending the hearing and determination of this suit, this honourable court be pleased to grant interim orders restraining the respondent or his agents from carrying out any construction or trespassing on land parcel No. E. BUNYORE/EMAKUNDA/1223.
4. THAT costs of this application be provided ; and
5. THAT such further and other relief that this honourable court may deem just and fit to grant.

The application is based upon the grounds set out in the Supporting Affidavit of JEREMIAH AHUNA AMULIOTO and upon and other grounds, that the applicant is the lawful and beneficial owner of land parcel No. E. BUNYORE/EMAKUNDA/1223. The respondent is a beneficiary of land parcel E. BUNYORE/EMAKUNDA/1223. The respondent has trespassed on land parcel No. E. BUNYORE/EMAKUNDA/1223 and is erecting semi-permanent structures. The respondent has adamantly refused to heed to calls to restrain himself from carrying out any other development on land parcel No. E. BUNYORE/EMAKUNDA/1223. The respondent is violating the right to quiet enjoyment of the applicant. The respondent with a view of dispossessing the applicant have started pouring building materials on the portion on which the applicant holds a valid title. The applicant is being deprived of his property which he lawfully acquired and owns.

In his supporting affidavit the Applicant submitted that, the land parcel NO. E. BUNYORE/EMAKUNDA/1223 is registered in his name as JEREMIAH AHUNA AMULIOTO. Attached is a copy a true copy of the title deed marked and annexed as J.A.A.-1. The respondent has trespassed on land parcel NO. E. BUNYORE/EMAKUNDA/1223 and is erecting semi permanent

structures with a view to settle therein by force. The respondent is pouring building materials on the land parcels NO. E. BUNYORE/EMAKUNDA/1223. The Applicant engaged the respondent informing him to desist from trespassing on his parcel of land but has consistently and adamantly refused to stop his aggressive actions. The respondent has adamantly refused to heed to calls to restrain himself/themselves/agents or servants from carrying out any other developments on land parcel NO. E. BUNYORE/EMAKUNDA/1223. The respondent has deprived the applicant of lawful ownership of portion of a land parcel NO. E. BUNYORE/EMAKUNDA/1223 where he has erected semi permanent structures. The actions of the respondent are depriving him usage and utilization of the land parcel that he lawfully own. The area chief and assistant chief have attempted to restrain the respondent but the respondent is wild and very aggressive and cannot listen to anybody and therefore there is need for a court order of injunction to restrain him for continuing with the breaches.

The respondent was served and failed to attend court or file any grounds of opposition and the matter proceeded exparte. This court has carefully considered the Applicant's submissions. 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.

In his supporting affidavit the Applicant submitted that, the land parcel NO. E. BUNYORE/EMAKUNDA/1223 is registered in his name as JEREMIAH AHUNA AMULIOTO. Attached is a copy a true copy of the title deed marked and annexed as J.A.A.-1. The respondent has trespassed on land parcel NO. E. BUNYORE/EMAKUNDA/1223 and is erecting semi permanent structures with a view to settle therein by force. The respondent is pouring building materials on the land parcels NO. E. BUNYORE/EMAKUNDA/1223. The applicant has shown a prima facie case with a probability of success at the trial. He has adduced documentary evidence to prove ownership. The applicant has also shown that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages. I find this application has merit and grant a temporary injunction in the following terms;

That pending the hearing and determination of this suit, this court to grants interim orders restraining the respondent or his agents from carrying out any construction or trespassing on land parcel No. E. BUNYORE/EMAKUNDA/1223. Cost of this application to be in the cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY OF JUNE 2017.

N.A. MATHEKA

JUDGE