



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO.54 OF 2017**

**1. SAID MUSA MITSANZE**  
**2. KAZUNGU GARAMA NZARO..... PLAINTIFFS**

**VERSUS**

**1. AHMED BIN OMAR BAMUMIN..... DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 22<sup>nd</sup> February 2017, and brought under sections 3A and 64 of the Civil Procedure Act and Order 40 Rule 10 (1)(b) and Order 1 Rule 8 of the Civil Procedure Rules, the plaintiffs are seeking the following orders: -

- 1. THAT this application be certified as extremely urgent and be heard on priority basis.**
- 2. THAT the respondent by himself, his servant and /or his agent be restrained by a temporary injunction from evicting, demolishing, harassing and or interfering with the plaintiffs/applicants occupation of Plot No.364/11/MN in Utange in the County of Mombasa pending the inter-parties hearing of this application.**
- 3. THAT the respondent by himself, his servant and/or his agent be restrained by a temporary injunction from evicting, demolishing, harassing and/or interfering with the plaintiffs/applicants occupation of Plot No.364/11/MN in Utange in the County of Mombasa pending the hearing of the main suit.**
- 4. THAT costs be in the cause.**

2. The application is supported by the grounds on the face of it and the affidavit of SAID MUSA MITSANZE. Briefly the applicants contend that they have lived, farmed and resided on the suit property as a community for over 20 years. The applicants aver that the Respondent has constantly threatened to evict them from the said land albeit unlawfully in collusion with police officers by attempting to demolish their houses without any court order.

3. There was no opposition to the application. Although the defendant was served with summons to enter appearance as well as the application herein, he never entered appearance nor filed any response to the application.

4. In their written submissions, the plaintiff's advocates reiterated the grounds on the face of the Notice of Motion and the contents of the Supporting Affidavit of Said Musa Mitsanze, the 1<sup>st</sup> plaintiff. The plaintiffs submit that the defendant is not a true owner of the suit property though he has proceeded to demolish the plaintiffs' houses and is still threatening to do so with a view to evicting the plaintiffs. The plaintiffs submit that they are residents of the suit property and they have lived and farmed and resided for over 20 years. It was further submitted that the plaintiffs have met the pre-requisites in the case of **GIELLA -VS- CASSMAN BROWN** for grant of interlocutory injunction. The applicants submitted that they have shown a prima facie case because they have lived, farmed and resided in the suit land for

over 20 years.

5. From the affidavit in support of the application, it has come out clearly that the applicants are in possession of the suit property. This is demonstrated in paragraph 3 of the Supporting Affidavit in which the applicants have annexed photographs showing demolitions being carried out. The photographs also show heavy machinery and vehicles as well as armed security personnel. It is clear from these photographs that there are buildings which are being demolished, a clear indication that there were occupants on the land who are being evicted. The applicants have stated that they are the ones who are in possession of the suit land and that they have lived there for over 20 years. There is no evidence contradicting the applicants' averments. The mere fact that the applicants are in possession in my view settles the principle of prima facie case with a probability of succeeding.

Secondly, by virtue of the fact that the applicants are living on the suit property as their homes settles the second principle of irreparable loss. It is no surprise that the respondent sought the services of armed police officers to assist in the demolition and eviction. Disruption of family life can be safely stated as irreparable which cannot be easily compensated by an award of damages. I am therefore satisfied that the applicant's fears were founded. It is only safe that the orders sought are granted to preserve the status quo and the suit property pending the determination of this suit.

6. As a result of the foregoing analysis, I find merit in the present application and proceed to grant prayer 3 of the application. The costs of the application shall abide by the outcome of the main suit.

**Dated, signed and delivered this 15<sup>th</sup> day of June 2017**

**C. YANO**

**JUDGE**