



suit claiming adverse possession of the said parcel of land and title. That the said parcel of land is registered in the name of Agnes Lusuka who is deceased and she has sued the respondent herein who is the personal representative of the estate of the said deceased having been so appointed vide Vihiga PM Succession Cause No. 14 of 2015. (Attached hereto are copies of the register of the suit title and the grant issued to the respondent, respectively marked “AMO1” and “AMO2”). The respondent has never occupied or used the suit land parcel NO. KAKAMEGA/KEGOYE/1126 or interfered with her exclusive possession and use thereof but he and his agents are now threatening to trespass on, alienate, sell or transfer the suit land and or interfere with her use thereof which will occasion her irreparable loss and damage. That she has had exclusive possession and use of the suit land for over 12 years and the respondent’s threatened actions are unlawful, illegal and improper and he ought to be restrained so that the applicant can continue to peacefully occupy and utilize the suit land until this case is determined otherwise it will be negated.

This court has considered the plaintiff/applicant’s submissions and the supporting affidavit therein. The respondent has not filed any grounds in opposition and the matter proceeded ex parte. 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 has had vacant, exclusive, peaceful, open and continuous occupation and use of land parcel NO. KAKAMEGA/KEGOYE/1126 from 1974 to-date and she has filed the present suit claiming adverse possession of the said parcel of land and title. She submits that the said parcel of land is registered in the name of Agnes Lusuka who is deceased and she has sued the respondent herein who is the personal representative of the estate of the said deceased having been so appointed vide Vihiga PM Succession Cause No. 14 of 2015. (Attached hereto are copies of the register of the suit title and the grant issued to the respondent, respectively marked “AMO1” and “AMO2”). It is her submission that respondent has never occupied or used the suit land parcel NO. KAKAMEGA/KEGOYE/1126 or interfered with her exclusive possession and use thereof but he and his agents are now threatening to trespass on, alienate, sell or transfer the suit land and or interfere with her use thereof which will occasion her irreparable loss and damage. These submissions were never challenged and I find that the applicant has established a prima facie case with a probability of success at the trial and has shown that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages. I therefore grant the following orders;

1. That an inhibition and or prohibitory order be issued against title NO. KAKAMEGA/KEGOYE/1126 to preserve it pending the hearing and determination of this suit.
2. That an order of injunction be issued against the respondent restraining him either by himself or through his relatives, employees and or agents from alienating, selling or offering for sale, laying claim to, trespassing onto, utilizing, developing, constructing on, carrying out any works on and or in any other manner dealing with land parcel NO. KAKAMEGA/KEGOYE/1126 and or interfering with the applicant’s possession, occupation and use of the said parcel of land pending the hearing and determination of this suit.
3. Costs of this application be in the cause.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26<sup>TH</sup> DAY OF JULY 2017.**

**N. A. MATHEKA**

**JUDGE**