



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**CIVIL CASE NO. 163 OF 2017**

**FRANKLINE NJABANI MURITHI .....PLAINTIFF**

**VERSUS**

**CHARITY MUTHOMI .....DEFENDANT**

**RULING**

1. This application, brought to Court by way of a Notice of Motion is dated 15th May, 2017 and seeks orders:-

1. Spent.

2. That the defendant her servants, agents, servant employees, her family members, legal assigns and representatives or anybody claiming under her name be restrained by way of temporary injunction from entering, fencing off, changing boundaries, occupying, developing in any way or interfering with plaintiff's plot No. 393 Kambi Juu within Isiolo Municipality within Isiolo County until hearing and determination of this application and until hearing and determination of this suit.

3. And or in the alternative the plaintiff remain in peaceful occupation of Plot No. 393 Kambi Juu Isiolo Municipality until hearing and determination of application and until hearing and determination of main suit.

4. The Court to grant any other relief to meets ends of justice.

5. Costs of application be provided for.

2. The application is based on the grounds:-

1. That the Plaintiff is the sole registered owner of Plot No. 393 Kambi Juu measuring 80 by 80 feet.

2. That the defendant and her agents have illegally been encroaching into plaintiff's land.

3. That if the defendant is not restrained, he shall put up permanent structures making the Plaintiff to suffer irreparable loss.

4. That despite the Plaintiff going into relevant offices to have this matter sorted out, the problem persists making her to file this suit.

3. The application is supported by the Affidavit of FRANKLINE NJABANI MURITHI sworn on 15th

May, 2017 and has the following grounds:-

1. That he is the applicant/plaintiff hence competent to swear this affidavit.
2. That he is the sole registered owner of plot No. 393 Kambi Juu Isiolo County annexed is a copy of letter from County Clerk County of Isiolo marked FJ 1 (a) and (b) .
3. That the plot measures "80 by 80" and he has fully developed the same, put up a semi permanent residential premises and was in exclusive peaceful occupation of the said plot.
4. That he has occupied the plot for along time without any interference from any one.
5. That this plot borders M' IMATHIO MUTIRITHIA'S plot who had Isiolo SPMCC NO. 2/2012 but died before the suit was prosecuted and non of his family members followed the case and it abated.
6. That before M'IMATHIO died he secretly entered into plaintiff's plot together with his agents and pulled down his houses, destroyed the fences when the plaintiff was away and his wife was sick in bed, and purported to join this plot with his.
7. That after demise of M'IMATHIO MUTIRITHIA, his daughter the defendant took over the operations of the said plot and continued with illegal activities.
8. That this dispute has been reported to several offices and the dispute is not yet settled; see copies of letters marked FJ 2 a, b, c,d, e, f, and g, (but defendant remains adamant).
9. That the plaintiff has been paying the relevant County Council rates as per copy of some of the receipts( FJ 3).
10. That the defendant, her family members and agents are now preparing to put up permanent buildings on the land and completely disposes the plaintiff off his plot.
11. That the Defendant have been warned against their illegal encroachment and illegal activities over the plaintiff's plot all in vain hence the need to restrain defendant.
12. That situation needs to be controlled otherwise situation can get out of hands.

4. The application was served but there is no response. That notwithstanding this Court will still have to analyse the issues presented to make a determination as to whether the prayers can be granted or not; See **Charter house investment ltd -Vs- Simon K. Sang & 3 others (2010) Eklr where the Court of Appeal observed that:-**

**"injunction is an equitable and discretionary remedy .....the award of Temporary Injunction by a Court of equity has never been guaranteed as a matter of right."**

5. From the documents filed as annexures to the application, it is apparent that the litigants have been having a long running dispute. The dispute has been handled by the county Governments of Isiolo, the Ministry of Lands and even the National Land Commission. The applicant has captured this history in paragraph 8 of his affidavit.

6. Annexure F J (2) (a) is a letter from the district Surveyor, Isiolo County to the Chief Executive Committee, Lands Housing and urban Development Isiolo County. The Surveyor is stating that demarcation and beaconing of the plot was stopped because the plot is occupied by the two litigants.

It is clear from the foregoing that the applicants claim of ownership cannot be ascertained at the interlocutory stage.

7. I therefore find that the application has not met the threshold in *Giella Versus Cassman Brown & Co Ltd. [1973] EA 358*. These are:-

*a. Demonstration of a Prima Facie case with a high probability of Success.*

*b. Demonstration that the Plaintiff stands to suffer irreparable loss unless the temporary injunction sought is granted.*

*c. If the Court is unable to determine the application based upon the first two principles, it will decide it upon a balance of convenience.*

8. The application is hereby dismissed with no orders as to costs.

**DELIVERED, DATED AND SIGNED AT MERU THIS 12TH DAY OF JULY, 2017 IN THE PRESENCE OF:**

C:A Janet

Wamache h/b for Kaume for Plaintiff

Kaimenyi Githinji for Defendant Present

Plaintiff Present

**HON. L. N. MBUGUA**

**ELC JUDGE**