



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 227 OF 2017

MARGARET WANJIRU WANDIA.....PLAINTIFF/APPLICANT

VS

METUMI POWER COMPANY LIMITED.....DEFENDANT/RESPONDENT

RULING

1. This is an application brought by way of Notice of motion dated the 13/4/2016, by the Plaintiff/Applicant against the defendant seeking to stop the Defendant from trespassing on the Applicant's property title No. LOC19/GACHARAGANI/2985 pending the determination of this application and the suit thereof.

2. The application is based on the grounds set out as follows;

- a) The Plaintiff/ Applicant is the registered owner of the parcel of land title No. LOC19/GACHARAGANI/2985.
- b) The defendant has encroached onto the Applicant's land and commenced excavating, constructing and digging trenches through the land without the consent of the Applicant therefore depriving the Applicant quiet possession of the land.
- c) The Defendant has continued to trespass on the applicants land ignoring demands from the Applicant to cease doing so
- d) That unless injunction orders are given the Defendant will not stop causing destruction to the plaintiff's land.
- e) The ingredients for an injunction have been met.

3. The application was supported by the supporting affidavit of Margaret Wanjiru Wandia. The counsel for the respondent entered appearance and filed their ground of opposition on the 9/3/2017. The Respondents later filed their replying affidavit on the 30/3/17 sworn by Peter Wachira. Counsel for both the parties choose to canvass the application by way of written submissions.

4. The Applicants begun their submissions by reiterating the contents of their supporting affidavit and denying all the grounds of opposition raised by the respondent. Further that the respondent begun the project in 2013 and trespassed on the applicants land, by clearing tea bushes, excavating and digging deep trenches before negotiations for compensation could be finalized. The respondent went on further to pour concrete on the deep trenches they had dug. While the applicant was not opposed to the project she required to be adequately compensated for loss of her land and developments thereon. The issue of the

ownership of the land is not contested, the land was inherited by the applicant and she does tea farming. The respondent destroyed over 2000 tea bushes and caused a large tract of the Applicant's parcel of land to be permanently unsuitable to cultivate any crop. No compensation has been made to the applicant for the loss. The acts of the respondent are likely to cause the applicant land permanently unsuitable for cultivation, the applicant therefore prayed for permanent injunction against the defendant.

5. The Applicant has referred the court to various case law precedents which I have duly noted. Further that pursuant to Article 23 of the Constitution and Section 63 and Order 40 of the Civil Procedure Act, temporary injunction is to be granted to preserve the subject matter of the suit to avoid it being depleted pending hearing and determination of the main suit.

6. On the three tenets of granting an interlocutory injunction the Applicants submitted that the Applicant had established a prima facie case by demonstrating ownership of the land and providing evidence of the damage done on the suit land by the respondents. The Applicant further contends that she will suffer irreparable loss if the actions of the respondents are not stopped by way of injunction. And lastly that the balance of convenience tilts to the favor of the applicant as there is clear trespass by the Respondent on the Applicants land and the respondent have not brought credible evidence to challenge that claim. The respondents have alluded to a supposed agreement between the Respondent and the Applicant but they have not produced documentary evidence to that extent. Finally that the respondent would not suffer any loss if the orders are granted. They also prayed for costs.

7. The respondents on their part submitted that the Defendant was running a development project that would benefit the residents of Mathioya. That the project would affect parcels of land for various land owners who would be compensated, and the Applicant land happened to be one of them. The respondent avers that the application before the court does not meet threefold rules prerequisite for a grant of temporary injunction. Firstly that the appellant has failed to establish a prima facie case because negotiations for acquisition of the land had been done and compensation package agreed on and that by signing on the minutes the applicant had agreed to it. To that extent then the respondent did not trespass on the land when they begun the project in 2014. That subsequent meetings were held in August 2016 and February 2017, to discuss compensation issues. That the Applicant has not produced evidence to show that the suit land is held in trust for other beneficiaries. No police abstract produced to proof report made to the police. Secondly that since the subject matter is land that is a commodity for value then Applicant has failed to prove that she will suffer irreparable loss that cannot be compensated in monetary terms. The respondent avers that in fact it's the Respondent and the public at large that would suffer if the project is stalled. Lastly that the balance of convenience tilts to the respondents in that the respondent and the residents of Mathioya would suffer greater loss if the project is stalled. They referred the Court to the case of **Hermannus Phillipus Steyn & 2 Others (2012) eKLR**. The respondents urged this Court to dismiss the application and award them costs.

8. The principles on which the Courts will grant an injunction are well known. This Court restated those principles in **Giella v. Cassman Brown and Co.Ltd(1973) EA 358**, together with the mode of their application as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establish a prima facie case; (b) demonstrate irreparable injury if a temporary injunction is not granted, and (c) show that the balance of convenience is in his favour”.

9. I will not belabor on the principles as both parties have extensively submitted on the same. Interlocutory orders are given by the court mainly to preserve the subject matter of the suit and maintain status quo pending determination of the main suit. At this stage therefore the court does not engage in resolution of contentious issues of facts that will be dispensed at the main hearing. The issue on whether there was a valid agreement in regard to the acquisition and compensation for the land, and what would amount to adequate compensation are key issues for determination in the main suit.

10. The application discloses an infringement on the right of quiet enjoyment of the Plaintiff

/Applicant's land by the acts of trespass caused by the respondent. I am therefore satisfied that the applicant has established a prima facie case and the application dated 24/2/17 is meritorious and is allowed as follows;

a) That a temporary injunction do issue restraining the Respondents/Defendant by itself its agents servants employees and or anybody or authority working under it from entering encroaching onto trespassing constructing damaging degrading and or in any way interfering with the plaintiff possession and proprietary rights over their plot known as L.R NO LOC 19/GACHARAGEINI/2985 pending the hearing and determination of this suit.

b). Costs shall be borne by the Respondents.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 28TH DAY OF SEPTEMBER 2017.

J. G. KEMEI

JUDGE