



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO.240 OF 2017

JOHN MARTINE OGURE OKOTH.....PLAINTIFF/APPLICANT

VERSUS

MARIA OGONGA OCHOLA.....1ST DEFENDANT/RESPONDENT

MARGARET MCHEMO AURA.....2ND DEFENDANT/RESPONDENT

RULING

This application is dated 31st July 2017 and is brought Section 63 (e) &3A of the Civil Procedure Act, Order 40 Rule 1 of the Civil Procedure Rules and seeks the following orders;

1. THAT the present application be and is hereby certified urgent and be heard on ex parte in the first instance.
2. THAT pending the hearing of this application interparties there be an order of temporary injunction restraining the defendants/respondents, their agents and/or assigns from trespassing, alienating, tilling or in any other way interfering with the applicant's use of land parcel No. BUTSOTSO/SHIKOTI/14591 being a subdivision of land parcel No. 5573.
3. THAT pending the hearing and determination of this suit there be an order of temporary injunction restraining the defendants/respondents, their agents and and/or assigns from trespassing, alienating, tilling or in any other way interfering with the applicant's use of land parcel No. BUTSOTSO/SHIKOTI/14591 being a subdivision of land parcel No. 5573.
4. THAT the honourable court be pleased to compel the 1st defendant to transfer land parcel No. BUTSOTSO/SHIKOTI/14591 subdivision of land parcel No. 5573 to the plaintiff herein.
5. THAT costs hereof be provided for.

This application is grounded on the annexed affidavit of John Martine Ogure Okoth, the applicant and the following grounds; the applicant purchased the suit land herein from the defendant and has been utilizing it. The applicant has constructed a house on the suit parcel of land. The respondent is interfering with his peaceful occupation of land by trespassing on it, tilling and planting crops with an air of impunity. The respondent's actions are occasioning the applicant irreparable loss and psychological anguish and the applicant is afraid this may lead to breach of peace.

The applicant stated that on 26th April, 2010 he purchased land parcel No. BUTSOTSO/SHIKOTI/14591 being a subdivision of land parcel No. 5573 from the defendant herein. (Annexed and marked "JM-1 & 2")

are copies of the agreement and mutation forms respectively). He has been utilizing the suit land since then and has constructed a house on the suit parcel of land. The defendant/respondent is interfering with his peaceful occupation by trespassing, tilling and cultivating various crops. The action of the respondent is causing him irreparable loss and psychological anguish and he is afraid this may lead to breach of peace.

This court has considered the plaintiff's/applicant's submissions and the supporting affidavits therein. The respondent was served but failed to attend court or file any papers 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 on 26th April, 2010 he purchased land parcel No. BUTSOTSO/SHIKOTI/14591 being a subdivision of land parcel No. 5573 from the defendant herein. (Annexed and marked "JM-1 & 2" are copies of the agreement and mutation forms respectively). He has been utilizing the suit land since then and has constructed a house on the suit parcel of land. The defendant/respondent is interfering with his peaceful occupation by trespassing, tilling and cultivating. The application has not been opposed. I find that the applicant has shown a prima facie case with a probability of success at the trial. The applicant has also shown that unless the order is granted, he will suffer loss. The application has merit and I grant the following orders;

1. THAT pending the hearing and determination of this suit there be an order of temporary injunction restraining the defendants/respondents, their agents and and/or assigns from trespassing, alienating, tilling or in any other way interfering with the applicant's use of land parcel No. BUTSOTSO/SHIKOTI/14591 being a subdivision of land parcel No. 5573.
2. THAT costs of this application be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27TH DAY OF SEPTEMBER 2017.

N.A. MATHEKA

JUDGE