



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 73 OF 2016

MAURICE HUDSON IMONJE ::::::::::::::: PLAINTIFF/APPLICANT

VERSUS

SILVANUS MUKOTO ::::::::::::::: 1ST DEFENDANT/RESPONDENT

VINCENT MUHATI ::::::::::::::: 2ND DEFENDANT/RESPONDENT

RULING

The applicant has brought this certificate of urgency dated 31st May 2017 for the following reasons;

1. The plaintiff/applicant cannot smoothly access his residential home situated on parcel of land better known as L.R. NO. KAKAMEGA/SHIVAKALA/2060.
2. The defendants/respondents have persisted into their unlawful acts.
3. The Defendants/Respondents are violent and have vowed to harm the plaintiff/applicant and his immediate members of the family and property at large.
4. The cause of action of this matter has persisted thereby causing a lot of concern and anxiety to the plaintiff/applicant.
5. The plaintiff/applicant has mature cane growing of parcel of land better known as KAKAMEGA/SHIVAKALA/2060 ready for harvest but the same cannot be ferried to miller due to unlawful acts by the defendant/respondent.
6. The plaintiff/applicant is likely to suffer irreparable damages if the cane will continue laying un-harvested on the field.

The applicant submitted that, he has mature cane growing on his parcel of land better known as L.R. NO. KAKAMEGA/SHIVAKALA/2060 is ready for harvest. That he has since been issued with harvesting permit from M/S. WEST KENYA SUGAR CO. LTD(Annexed is a copy of the permit marked MHI-1). That he is in a predicament as he cannot harvest the cane due to closure of the access road by the defendants/respondents. That if the mature cane cannot be harvested now then it will go to a waste and therefore occasion him irreparable damages. That he has invested heavily in the 2 acres of land under cane crop. He now seeks an injunction for the defendant/respondents not to block the road. The respondents were served but failed to attend court and the matter proceeded exparte.

This court has considered the plaintiff's/applicant's submissions and the supporting affidavit therein. 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.

This court has perused the documents in the file in support of the applicant's case. It is not clear from the record the description of the access road and/or the ownership of the same. I find that the applicant has failed to show a prima facie case with a probability of success at the trial. The said access road is not the parcel number No. KAKAMEGA/SHIVAKALA/2060. This application has no merit and I dismiss it with costs.

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

N.A. MATHEKA

JUDGE