



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO.9 OF 2016

SHADRACK MUSE ANDAI ::::::::::::::::::::PLAINTIFF/APPLICANT

VERSUS

BENARD MULIANGO

SILAS MULIANGO)

BILHA VIHENDA):::::::::::::::::: DEFENDANTS/RESPONDENTS

RULING

This application is dated 7th July 2017 and is brought Section 63(C) &3A of the Civil Procedure Act, Order 40 Rule (1) & (2) of the Civil Procedure Rules and seeks the following orders;

1. THAT the application be certified as urgent and be heard on priority basis.
2. THAT the costs of this application be provided to the applicant/plaintiff.
3. THAT pending the hearing and determination of the main suit interparties, this honourable court be pleased to issue an order against payment of the sugarcane proceeds harvested from the suit land KAKAMEGA/LUMAKANDA/5876 by the defendants/respondents and sold to Butali Sugar Company Ltd.
4. THAT there be a preservative order against the maize crops planted thereon land parcel registration number KAKAMEGA/LUMAKANDA/5876 pending hearing and determination of the suit herein interparties and be stored and preserved in the plaintiff/applicant's storage.
5. THAT the defendants/respondents, their agents, D.C.I.O Lugari District, their relatives (wives, sons & daughters) be punished under law for contempt of court.
6. THAT the restriction registered on the suit land KAKAMEGA/LUMAKANDA/5876 that was lodged by the D.C.I.O Lumakanda be cancelled and or revoked.
7. THAT the defendants/respondents be punished for lying to the state officers in their statements in the criminal case number 4974 of 2016 at Eldoret pertaining the issues herein.
8. THAT the County Criminal Investigating officer to ensure compliance.
9. THAT the cost be in cause.

The application is supported by the following grounds and supporting affidavit of Shadrack MuseAndai. The grounds are that the defendants/respondents herein had a case with the first seller administration High Court Civil Case No. 166 of 1996 at Eldoret claiming adverse possession and it was dismissed and the land was sold to many different parties including the applicant/plaintiff herein and the respondents/defendants did not appeal in time and or period stipulated in law. The defendant/respondents, their agents D.C.I.O Lumakanda, Criminal Investigation Officers have continued lodging/filing restrictions/cautions on the said land that belongs to the applicant/plaintiff and have further proceeded to planting and or cultivation crops such as sugarcane, maize, beans and other crops contrary to the court order dated 4th March 2017 in the High Court case No. 166 of 1996 at Eldoret and High court Environment and Lands Case No. 9 of 2016 at Kakamega. The plaintiff/applicant planted his sugarcane and maize later on the defendants/respondent went behind his back and started planting the same while the vehicle of Lumakanda Division C.I.D. supplied the seeds and fertilizer and patrols he area. The D.C.I.O has lodged a caution/restriction on the land questioned registration no. KAKAMEGA/LUMAKANDA/5876 that belongs to the applicant contrary to the court order dated 17th February 2016 that was issued in this court and served to the defendants/respondents. The said land was sold to the plaintiff/applicant in good faith on 5th July 2012 and the plaintiff obtained certificate (Title) accordingly and has no complaint against the seller one MaryNthokiMumbu who is aged and still alive. The defendants/respondents have no capacity to claim anything from the plaintiff/applicant since there is no any relationship between them and also have no reason to complain and or claim anything against the applicant herein. The applicant has submitted that, defendants/respondents have hired government security agents, D.C.I.O. attached at Lumakanda C.I.D. Headquarters to frustrate the plaintiff/applicant, who have arrested the plaintiff/applicant and accused the plaintiff/applicant with a serious criminal case No. 4974/2016 at Eldoret. The defendant/respondents' were served but failed to attend court or file any papers and the matter proceeded ex parte.

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.

The applicant has submitted that on or about 15th July 2012 at Kakamega he entered a land sale agreement with the seller Mrs. Mary NthokiMumbu through her appointed Attorneys and started paying in instalments and a copy of the sale agreement is attached and marked SMA-4. That the applicant proceeded to process the same and obtained his consent from Lumakanda Land Control Board and later obtained his title deed certificate and the copies of which are attached and marked as annexures SMA-5. That in 2015 the respondents/defendants started preventing him from cultivating, ploughing and or utilizing his land and they continually destroyed his sugarcane and main and planted their own on the same plantations planted by the applicant/plaintiff. In 2016, the applicant filed a civil case at Kakamega CMCC No. 198 of 2016 and restrained the respondents/defendants from being paid the dues from his land from Butali Sugar Company Ltd; a copy of the order is attached and marked as annexure SMA-6. The applicant proceeded to file the civil case herein and obtained court orders restraining the said defendants/respondents either by themselves, agents, servants, relatives and or anybody acting for and or on their behalf from cultivating, selling, alienating and or otherwise interfering with the plaintiff's peaceful occupation on the parcel of land better known as L.R. NO. KAKAMEGA/LUMAKANDA/5876 pending hearing and determination of the suit herein interparties and the orders was served against the defendants and a signed copy of the order and affidavit of service are attached and marked as SMA-7 a

&b. I have perused the court file and it appears that the parties in this matter have gone through numerous applications and have obtained various court orders that are unending. I find that this matter can only be conclusively determined once it goes on to full trial. The applicant seems to have an injunction against the respondent and hence he should pursue enforcement of the same. I find this application has no merit and dismiss the same. Parties are advised to take are hearing date for the full trial. Costs of this application to 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