



**REPUBLIC OF KENYA**

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

**ELC NO.208 OF 2017**

**GEORGE NAMAWA ANGAYA ::::::::::::::: PLAINTIFF/APPLICANT**

**VERSUS**

**ENOCK GEORGE MUKABANA :::::::::::::: DEFENDANT/RESPONDENT**

**RULING**

This application is dated 22<sup>nd</sup> June 2017 and is brought under Order 40 Rule 1 and 2 of the Civil Procedure Rules and seeks the following orders;

1. **THAT** the present application is urgent and ought to be heard *ex parte* in the 1<sup>st</sup> instance.
2. **THAT** pending the hearing and determination of this application the respondent, his agents, servants, proxies and or any other person claiming through him be restrained by an order of injunction from interfering, working, developing and or ploughing land parcels Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984.
3. **THAT** upon prayer (2) above being granted the interim order be deemed to remain in force until the hearing and determination of this application.
4. **THAT** the costs hereof be provided for.

The application is supported affidavit of George Namawa Angaya, the applicant and the following grounds; the applicant is the sole registered owner of land parcels Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984. The respondent has remained adamant and has continued to develop and interfere with the applicant's parcel of land. The respondent has his own parcel of land which is land parcel No. MARAMA/INAYA/1366 and has no right whatsoever to interfere with land parcels No. MARAMA/INAYA/984 which belongs to the applicant. The respondent has malicious intentions as he has gone ahead to uproot the beacons erected and as such gone against the spirit of fair play.

The applicant submitted that he is the sole registered owner of land parcels Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984 (Annexed and marked "GN-1a & b" are copies of land title deeds). The respondent has adamantly continued working, interfering with land parcels Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984. This is the only investment the applicant has and he stands to suffer irreparable loss. That efforts by the local administration to resolve the stalemate have been futile. The respondent is ploughing and is in the process of developing and/or extending the kiosk erected on his land parcel without his consent and or knowledge. The respondent was served and failed to attend court or file any papers and the matter proceeded *ex parte*.

This court has considered the plaintiff/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 stated that he is the sole registered owner of land parcels Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984. (Annexed and marked "GN-1a & b" are copies of land title deeds). He submitted that the respondent has adamantly continued working, interfering with land parcels Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984. The respondent is ploughing and is in the process of developing and or extending the kiosk erected on his land parcel without his consent and or knowledge. This application has not been opposed. On perusal of the said annexures GN-1a & b" which are copies of land title deeds I find that the applicant is the registered owner of Land parcel No. MARAMA/INAYA/984. Land parcel No. MARAMA/INAYA/1010 seems to belong to another person namely Edward Amwayi Abraham who is not a party to this suit. I find that the applicant has shown a prima facie case with a probability of success at the trial as regards Land parcel No. MARAMA/INAYA/984. He has also shown that unless the order is granted, he will suffer loss. I find this application has merit and I grant the following orders;

1. THAT pending the hearing and determination of this suit the respondent, his agents, servants, proxies and or any other person claiming through him be restrained by an order of injunction from interfering, working, developing and or ploughing land parcel No. MARAMA/INAYA/984.
2. That the costs of this application be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2017.**

**N.A. MATHEKA**

**JUDGE**