



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 381 OF 2016

WANYORORO FARMER COMPANY LTD.....PLAINTIFF

VERSUS

THE BOARD OF GOVERNERS ST JOSEPH'S KIRIMA

SECONDARY SCHOOL.....1ST DEFENDANT

THE NATIONAL LAND COMMISSION.....2ND DEFENDANT

HON. KIMANI NGUNJIRI.....3RD DEFENDANT

RULING

(Application for injunction to restrain the defendants from interfering or dealing with the suit property; application allowed)

1. The plaintiff moved the court through Notice of Motion dated 19th September 2016 seeking the following orders:

1. Spent.

2. Spent.

3. THAT pending the hearing and determination of this suit, this Honourable Court be pleased to issue an injunction order against the defendants and/or their agents from interfering or dealing in any way with the parcel of land known as SOLAI NDUNGIRI BLOCK 3/725 (WANYORORO "B").

4. THAT costs of this application be borne by the respondents herein.

2. The application is brought under Order 40 rules 1, 2 and 3 of the Civil Procedure Rules, 2010 and is supported by an affidavit sworn by Eliud Ndungu Thuo, the secretary of the plaintiff company. He deposed that the plaintiff is a limited liability company that operates as a land burying company.

3. He further deposed that the parcel of land known as Solai Ndungiri Block 3/725 (Wanyororo "B") was initially allocated by the plaintiff to a coffee factory but was later on 18th May 1992 irregularly registered in the name of County Council of Nakuru as a trustee for St. Joseph's Kirima Secondary School. Upon the plaintiff's complaint and upon the County Council of Nakuru disowning the registration, the plot was reverted to the plaintiff and a title deed in respect thereof issued on 23rd March 2009 showing the plaintiff

as registered owner.

4. He also deposed that under mysterious circumstances, the 1st defendant was registered as owner of the suit property on 24th November 2014 and a title deed issued to that effect. Subsequently, the Principal Secretary, Ministry of Education, has distanced the Ministry from the registration of the property in favour of the 1st defendant.

5. Mr. Thuo further deposed that the plaintiff had intended to use the parcel of land as a market and had even subdivided it and allocated it to its members so that they could set up kiosks. The plaintiff thus prays for the orders sought in the application.

6. Despite being served, none of the defendants filed any response to the application or attended its hearing. Consequently, the hearing proceeded unopposed. Counsel for the plaintiff relied on the affidavit in support of the application and urged the court to grant the orders sought.

7. I have considered the application, the supporting affidavit and counsel's submissions. As already pointed out, the defendants have not challenged the plaintiff's case in any way. Nevertheless, the plaintiff must satisfy the test for granting an interlocutory injunction. In an application for an interlocutory injunction such as the present one, the applicant must establish a prima facie case with a probability of success. Even where a prima facie case is established, an injunction ought not to issue if damages can adequately compensate the applicant. Finally, if the court is in doubt as to the answers of the above two tests then the court should determine the matter on a balance of convenience. These principles were enunciated in the case of **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358** and have recently been reiterated by the Court of Appeal in **Nguruman Limited –vs- Jan Bonde Nielsen & 2 Others [2014] eKLR**.

8. From the material placed before the court, I note that the plaintiff was the registered proprietor of the suit property from 17th March 2009 until 26th November 2014 when the ownership changed to the Permanent secretary, Ministry of Education apparently in trust for St. Joseph's Kirima Secondary School. The change of ownership was effected in unclear circumstances and the ministry is on record as disowning the registration of the property in its favour.

9. More importantly, the defendants have not challenged the plaintiff's case as regards all these matters. In the circumstances, I am persuaded that the plaintiff has established a prima facie case with a probability of success. I do not think damages can adequately compensate the plaintiff in the event that it was to lose the land.

10. For the foregoing reasons, I make the following orders:

a) Pending the hearing and determination of this suit, the defendants and/or their agents are hereby restrained from interfering or dealing in any way with the parcel of land known as SOLAI NDUNGIRI BLOCK 3/725 (WANYORORO "B").

b) Costs to the plaintiff.

11. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 24th day of October 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Ngure holding brief for Mr. Wachira for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: Gichaba