



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**CASE No. 176 OF 2017**

**JAMES GITHINJI MBUGUA.....PLAINTIFF**

**VERSUS**

**DOMINIC KIMANI THIGE.....1<sup>ST</sup> DEFENDANT**

**THOMAS K. TANGUS.....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for injunction; allowed)***

1. By Notice of Motion dated 27<sup>th</sup> April 2017 brought under Order 40 rules 1, 2 and 4 of the Civil Procedure Rules, 2010, the plaintiff sought the following orders:

*1. Spent.*

*2. Spent.*

*3. THAT pending the hearing and determination of this suit this honourable court be pleased to issue a temporary injunction restraining the defendants by themselves, their agents and or servants from trespassing, selling, disposing, developing charging and or dealing with Molo South/Kersoi Block 4/280 (Mwaragania) in any manner whatsoever.*

*4. THAT the D.C.I.O Kuresoi and County Commissioner, Kuresoi Division to provide security and ensure that the defendants herein do not enter into the suit land whatsoever.*

*5. THAT the costs of this application be provided for.*

2. The application is supported by an affidavit sworn by the plaintiff on 27<sup>th</sup> April 2017. The plaintiff deposed that he is the registered proprietor of the parcel of land known as Molo South/Kersoi Block 4/280 (Mwaragania). A copy of the title deed was annexed.

3. The plaintiff further deposed that the defendants entered into his aforesaid property in February 2017 started destroying it and have even erected a fence. That the defendants have failed to heed his pleas and warnings issued through a demand letter. A copy of a demand letter dated 8<sup>th</sup> February 2017 and photographs were annexed.

4. When the application came up for inter parte hearing on 30<sup>th</sup> May 2017, the defendants sought and were granted 60 days within which to file and serve their response to the application. The matter was then scheduled for inter parte hearing on 27<sup>th</sup> September 2017.

5. Come 27<sup>th</sup> September 2017, the defendants had not filed a response. A request by the defendants for more time was considered by the court and declined. Counsel for the plaintiff thus urged the court to treat the application as unopposed and thus allow the application. On his part, counsel for the defendants left it to the court.

6. I have considered the application, the affidavit filed in support and submissions of counsel. In an application for an interlocutory injunction, the applicant ought to 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**.

7. I have perused the copy of the title deed which was annexed by the plaintiff and I am persuaded that the plaintiff is the registered owner of the suit property. I am also persuaded, in the basis of the affidavit evidence and the annexed copy demand letter as well as photographs, that the defendants have entered into the suit property and have destroyed the plaintiff's property. In the circumstances, I am persuaded that the plaintiff has established a prima facie case with a probability of success. Considering that the dispute concerns land, damages will not be an adequate remedy.

8. In view of the foregoing, I make the following orders:

a) A temporary injunction is hereby issued restraining the defendants by themselves, their agents and or servants from trespassing, selling, disposing, developing charging and or dealing with Molo South/Kersoi Block 4/280 (Mwaragania) in any manner whatsoever pending the hearing and determination of this suit.

b) Costs to the plaintiff.

**Dated, signed and delivered in open court at Nakuru this 19<sup>th</sup> day of October 2017.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Waiganjo for the plaintiff/applicant

No appearance for the defendants/respondents

Court Assistant: Gichaba