



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND AT KAKAMEGA**

**ELC NO. 220 OF 2017**

**BAKARI MAKOKHA:::PLAINTIFF/APPLICANT**

**VERSUS**

**SYLVESTER ODHIAMBO WABUYABO**

**ALI ABDALLA ALI:::DEFENDANT/RESPONDENT**

**RULING**

This application is dated 28<sup>th</sup> August 2017 and is brought by way of notice of motion and seeks the following orders;

1. THAT this matter be certified as urgent and heard on priority basis.
2. THAT the honourable court be pleased to issue an order of status quo restraining the 1<sup>st</sup> defendant from utilizing land measuring 1.01 Ha being the 2<sup>nd</sup> defendant share in respect to L.P. No. N/W/Mayoni/1108 until the hearing and determination of this application suit inter-parties and/or until further orders of this court.
3. THAT costs of this application be provided for by the 1<sup>st</sup> respondent.

The plaintiff/applicant submitted that, the 2<sup>nd</sup> defendant/respondent bought land from the applicant's deceased father Issa Matere Munyanya in the year 2010 and he was issued with title deed in 14<sup>th</sup> March 2011 for Land Parcel No. N/W/Mayoni/1108. The 1<sup>st</sup> respondent/defendant without the applicant's consent as the estate administrator and that of the 2<sup>nd</sup> respondent/defendant has trespassed into Land Parcel N/Wanga/Mayonyi/1108. The 1<sup>st</sup> respondent/defendant having been served with court documents has gone ahead ploughed the same ready to plant and if the orders sought are not granted the applicant and 2<sup>nd</sup> respondent/ defendant stands to continue suffering.

The 1<sup>st</sup> respondent/defendant submitted that, he is the sixth (6<sup>th</sup>) son of the late Mr. Nicholas Wabuyabo Wambusi who passed on intestate in 1982 and solemnly vested under trust from the surviving family members of the deceased father to manage, stay and cultivate land parcel No. N/Wanga/Mayoni/845 measuring approximately 3.62 Ha and not land parcel No. N/Wanga/Mayoni/1108 as prayed by the applicant (annexed and marked Ab 1 and Ab 2). The 2<sup>nd</sup> respondent/defendant bought the said parcel N/Wanga/Mayoni/1108 from Mr. Joseph Omondi Oduor of P.O. Box 14, Musanda and not from the applicant deceased father Issa Matende Munyanya (annextures Ab3 and Ab4). That this application should be dismissed with costs.

This court has considered both the Applicant's and the 1<sup>st</sup> respondent's submissions and the supporting affidavits 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 plaintiff/applicant submitted that, the 2<sup>nd</sup> respondent/defendant bought land from the applicant's deceased father Issa Matere Munyanya in the year 2010 and he was issued with title deed in 14<sup>th</sup> March 2011 for Land Parcel No. N/W/Mayoni/1108. The 1<sup>st</sup> respondent/defendant without the applicant's consent as the estate administrator and that of the 2<sup>nd</sup> respondent/defendant has trespassed into Land Parcel N/Wanga/Mayonyi/1108. I have perused the documents on record and find that the land Parcel N/Wanga/Mayonyi/1108 is registered in the name of the 2<sup>nd</sup> respondent/defendant. The applicant in this matter has no proprietary interest and locus standi to bring this application. I find this application has no merit and dismiss it with costs.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 10<sup>TH</sup> DAY OF OCTOBER 2017.**

**N. A. MATHEKA**

**JUDGE**