



**REPUBLIC OF KENYA**

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

**ELC NO. 355 OF 2017**

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

**VERSUS**

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

**RULING**

This application is dated 3<sup>rd</sup> October 2017 and is brought under order 40 Rule 1, 2 Civil Procedure Rules seeking 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 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 No. MARAMA/INAYA/1010 and MARAMA/INAYA/984. This is the only investment he has and he stands to suffer irreparable loss. 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. That it is in the best interest of justice that the orders sought be granted. The respondent shall not be prejudiced in any way and that peace and tranquility should be maintained.

This court has considered the application, affidavit, annexures and submissions therein. The respondent was served but failed to attend court or file any grounds in opposition. 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 grounds of the application are that 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 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 Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984 which belong to the applicant. The respondent has gone ahead to uproot the beacons erected. On perusal of the annexures I find that the applicant has attached a copy of the title deed of land parcel number MARAMA/INAYA/1010 only. No ownership of land parcel number MARAMA/INAYA/984 has been established. I find that the applicant has established a prima facie case with a probability of success at the trial. The applicant has shown that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages. I find that the application has merit and 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 parcels Nos. MARAMA/INAYA/1010 and MARAMA/INAYA/984.

2. Costs of this application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 23<sup>RD</sup> DAY OF NOVEMBER 2017.**

**N.A. MATHEKA**

**JUDGE**