



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 266 OF 2017

MARY MUDAMBO.....PLAINTIFF/APPLICANT

VERSUS

JULIUS TUWEI CHEPUTEK.....DEFENDANT/RESPONDENT

RULING

This application is dated 18th July 2017 and is brought under section 63 of the Civil Procedure Act and Order 40 rules 1, 2, 3, 4 & 5 of the Civil Procedure Rules seeking the following orders;

1. THAT this application be certified urgent to be heard ex-parte in the first instance.
2. THAT a temporary injunction be issued restraining the defendant/respondent from entering upon, trespassing, damaging maize crops and/or in any other way interfering with the plaintiff's parcel of land measuring one (1) acre, Mbururu farm, pending hearing and determination of this matter.
3. THAT pending interparties hearing, prayer No. 2 be granted in the interim.
4. Costs be provided for.

It is made on the following **GROUND**s:- The plaintiff/applicant is the bonafide owner of one (1) one acre of land, Mbururu farm, having bought the same from the defendant/respondent on 2nd June, 1989. The plaintiff/applicant has developed and fenced the suit land. The defendant/respondent in collusion with the area chief together with a private surveyor, trespassed on the plaintiff/applicant's parcel of land, hived off three (3) points and fenced the hived portion by using posts and barbed wires. The defendant/respondent intends to dispose of the hived portion to third parties. That unless the orders sought are granted, this suit shall be rendered nugatory.

The applicant submitted that she is the bonafide owner of the parcel of land herein having bought the same from the defendant/respondent on 2nd June, 1989. Annexed and marked 'MM1' is a copy of the sale agreement. That she took possession immediately of the suit land and has stayed thereon since then to-date. That after selling her the land, the defendant/respondent refused to give her an access road and she was forced to lodge a complaint at the then Land dispute Tribunal. The defendant/respondent has suddenly woken up and is laying claim over her parcel of land and states that the land he sold her is in excess by three (3) points yet he was the one, together with village elders who measured the land placed beacons marking the boundaries of the land he sold her. That the defendant/respondent's claims are laced

with ill motive and/or intent to deprive her of her right to own the suit parcel of land simply because she took him to the Tribunal demanding for an access road. That on 4th May, 2017, she was summoned by the area Chief, Nzoia location and when she went, she was told that the defendant/respondent had lodged a complaint in his office to the effect that her land was in excess of three points and he promised to visit the land. Annexed and marked 'MM3' is a copy of the summons. That on 10th May, 2017, the Chief indeed visited her land and in the company of a private surveyor and the defendant/respondent and they hived of the three points and demarcated the boundaries by using sisal plants. That later, she went to the office of the District Commissioner and who advised her to uproot the sisal. That again, the defendant/respondent, the chief, a private surveyor and three purchasers came to her farm, forcefully resurveyed the land and hived off three (3) points and fenced the hived portion. Annexed and marked 'MM4' are photographs. That while the exercise of resurveying of her land was underway, the said chief held her and stepped on her neck in bid to frustrate her efforts of protest and in the process she got injured and sought medical attention to that effect. Annexed and marked 'MM5' are copies of treatment notes. That the defendant/respondent is hell bent to snatch from me my rightly owned parcel of land.

The respondent was served and failed to attend court or file any grounds of opposition. This court has considered the applicant/plaintiff'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 plaintiff/applicant is the bonafide owner of one (1) one acre of land, Mbururu farm, having bought the same from the defendant/respondent on 2nd June, 1989. Annexed and marked 'MM1' is a copy of the sale agreement. The plaintiff/applicant has developed and fenced the suit land. The defendant/respondent with the area chief together with a private surveyor, trespassed on the plaintiff/applicant's parcel of land, hived off three (3) points and fenced the hived portion by using posts and barbed wire. The defendant/respondent intends to dispose of the hived portion to third parties. That unless the orders sought are granted, this suit shall be rendered nugatory. These submissions have not been opposed. I find that the applicant has shown a prima facie case with a probability of success at the trial. She has also shown that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages. I find the application has merit and grant the following orders;

1. THAT a temporary injunction be issued restraining the defendant/respondent from entering upon, trespassing, damaging maize crops and/or in any other way interfering with the plaintiff's parcel of land measuring one (1) acre, Mbururu farm, pending hearing and determination of this suit.
2. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 22ND DAY OF NOVEMBER 2017.

N.A. MATHEKA

JUDGE