



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 204 OF 2014

ALEXANDER LWENYI:::::::::::::::::::::::::::::::::::::::::APPLICANT/RESPONDENT

VERSUS

MENA AMATYSA NGOISI:::::::::::::::::::::::::::::::::::::::::RESPONDENT

AND

MORIS ABUNG'ANA LUSEKA:::::::::INTERESTED PARTY/APPLICANT

RULING

The application is dated 9th October 2017 and is brought under section 3 and 3A of the Civil procedure Act seeking the following orders;

1. This honourable court be pleased to certify that this application as urgent.
2. This honourable court be pleased to dispense the service of the application in the 1st instance.
3. This honourable court be pleased to enjoin the applicant herein as an interested party to this proceedings.
4. This honourable court be pleased to grant an order of temporary injunction restraining the applicant/respondent herein ALEXANDER LWENYI from trespassing, encroaching, cultivating, tilling, planting, obstructing peaceful occupation of the applicant's use and/or otherwise being in possession of the applicant's parcel of land better known as L.R. NO. ISUKHA/MURHANDA/578 and/or any portion thereof pending hearing and determination of this application interparties.
5. This honourable court be pleased to an order of temporary injunction restraining the applicant/respondent herein ALEXANDER LWENYI from trespassing, encroaching, cultivating, tilling, planting, obstruction peaceful occupation of the applicant's use and/or otherwise being in possession of the applicant's parcel of land better known as L.R. NO. ISUKHA/MURHANDA/578 and/or any portion thereof pending hearing and determination of this suit.
6. Costs of this application should be provided for:-

The grounds are that, applicant herein is the sole registered owner, absolute, of whole parcel of land better known as L.R. NO. ISUKHA/MURHANDA/578. The applicant is not a party to these proceedings despite having registration interest in the suit land better known as L.R. NO. ISUKHA/MURHANDA/578. The applicant's omission from these proceedings is a deliberate attempt to

lock him out. The applicant/respondent has without justifiable cause of action, permission, consent, colour of right and/or otherwise trespassed and/or encroached on the applicant's parcel of land better known as LR NO. ISUKHA/MURHANDA/578 and started cultivating crops denying the applicant the occupation and use thereby causing intolerable mental anguish and anxiety.

The applicant submitted that, on or about the 25th day of April, 2013, he entered into a land sale agreement purchasing the whole of parcel of land better known as L.R. ISUKHA/MURHANDA/578 from the respondent herein. (Annexed is a copy of the agreement marked "Mal-1). The purchase price was duly acknowledged in full upon executing the sale agreement. That it is within his knowledge that the due procedure for acquiring of land title deed was followed to the letter which no person appeared to object. (Annexed is a copy of the application of for consent of Land Control Board, letter of consent and transfer of land marked "MAL-2", "MAL-3" and "MAL-4". It is within his knowledge that the respondent herein reported the loss of the title to the relevant authorities and she was issued with a fresh one after the expiry of sixty (60) days.(Annexed is a bundle of documents, police abstract, declaration, gazette notice for issue of a new certificate, forwarding letter, money order and the Kenya Gazette marked "MAL-5a", "MAL-5b", "MAL-5b", "MALE-5c "MAL-5d", "MAL-5e" and "MAL-5f". On this strength he got a clean title transferred to himself from the respondent. On or about the 20th day of October, 2013, he got registered as a sole proprietor, absolute, of whole that parcel of land better known as L.R. NO. ISUKHA/MURHANDA/578 and title issued to him. That he is the bonafide registered owner by virtue of being a purchaser for value. That at the time of the purchase of this parcel of land, it was fallow and idle not in occupation and use of anybody and thereby it is blatant lie for the applicant/respondent that he was born and brought on the suit land yet no single structure stands thereon. The applicant/respondent began to lay this claim to the land after he learned his registration of title. The applicant/respondent has without justifiable cause of action, permission, consent any colour of right and/or otherwise, trespassed, encroached his parcel of land and cultivated, planted food crops denying him actual occupation and use to his land thereby causing irreparable loss and damages. He has incurred great loss and has been denied the occupation and use of his parcel of land better known as L.R. NO. ISUKHA/MURHANDA/578 despite having invested heavily the fruits of his sweat.

This court has considered the interested party's application, supporting affidavit annexures and submissions herein. The applicant 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 interested party submitted that he is the bonafide registered owner by virtue of being a purchaser for value. That at the time of the purchase of this parcel of land, it was fallow and idle not in occupation and use of anybody and thereby it is blatant lie for the applicant/respondent that he was born and brought on the suit land yet no single structure stands thereon. The applicant/respondent began to lay this claim to the land after he learned his registration of title. I have perused the annexures on record and find indeed there is a copy of the agreement marked "Mal-1, a copy of the application of for consent of Land Control Board, letter of consent and transfer of land marked "MAL-2", "MAL-3" and "MAL-4, and a bundle of documents, police abstract, declaration, gazette notice for issue of a new certificate, forwarding letter, money order and the Kenya Gazette marked "MAL-5a", "MAL-5b", "MAL-5b", "MALE-5c "MAL-5d", "MAL-5e" and "MAL-5f". However, there is no copy of title anywhere on record. I find that the interested party/applicant has not shown a prima facie case with a probability of success at the trial and

that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages. An injunction cannot issue at this stage. However, I find that the applicant has shown legitimate interest in this matter by annexing a copy of agreement marked "Mal-1, a copy of the application of for consent of Land Control Board, letter of consent and transfer of land marked "MAL-2", "MAL-3" and "MAL-4. I therefore grant the following orders;

1. That the applicant be enjoined as an interested party in these proceedings.
2. That the costs of this application be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 16TH DAY OF NOVEMBER 2017.

N. A. MATHEKA

JUDGE