

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO. 100 OF 2017

CHARLES KAMATU KABUTHA.....PLAINTIFF

VERSUS

MUGENDI NJERU NJARIRE.....DEFENDANT

RULING

1. By a plaint dated 23rd May 2017 and filed on 24th May 2017, the Plaintiff pleaded that he was the registered proprietor of *Title No. Nthawa/Gitiburi/1341* (hereinafter the ‘suit property’) having purchased it for valuable consideration from the Defendant’s grandfather in 1972.

2. It was further pleaded that the Defendant had without any colour of right trespassed upon the suit property, cultivated it and constructed a mud house thereon. It was further pleaded that the Defendant was committing other acts of waste upon the suit property in consequence of which the Plaintiff sought an order for the Defendant’s eviction from the suit property.

3, Simultaneously with the filing of the suit, the Plaintiff filed an application for interlocutory injunction under ***Order 40 Rules 1 and 2 of the Civil Procedure Rules*** seeking to restrain the Defendant from further trespass or waste of the suit property pending the hearing and determination of the suit. The said application was supported by the Plaintiff’s affidavit sworn on 23rd May 2017 to which he annexed copies of the relevant sale agreement and certificate of official search in respect of the suit property.

4. The Plaintiff basically reiterated the contents of the plaint in his supporting affidavit. He stated that the Defendant had wrongfully invaded the suit property by tilling his land and constructing some structures thereon without his consent. He further stated that he had reported the matter to the local administration for resolution without success.

5. The Plaintiff further stated that unless the Defendant is restrained by an order of this court, he shall continue with further trespass, waste and destruction upon the suit property and that he may erect additional structures thereon.

6. Although the defendant entered appearance and filed a defence to the action, he did not file any response to the Plaintiff’s said application despite having been accorded an opportunity to do so. The Defendant’s advocate also failed to turn up for *interpartes* hearing on 27th September 2017 with the consequence that the Plaintiff’s said application proceeded *ex-parte*.

7. The court has considered the Plaintiff’s said application and the evidence on record. The court notes that the Plaintiff’s affidavit evidence has not been controverted by the Defendant. The court therefore accepts the unchallenged evidence of the Plaintiff in its entirety.

8. On the basis of the Plaintiff’s said evidence, the court is satisfied that the Plaintiff has satisfied the requirements for the grant of an order of interlocutory injunction as set out in the case of ***Giella Vs Cassman Brown & Co Ltd [1973] EA 358***. The court therefore finds merit in the Plaintiff’s notice of motion dated 23rd May 2017 and the same is hereby allowed in terms of prayer (c) thereof. Costs of the application shall be in the cause in line with the holding of the court in the case of ***Giella vs Cassman Brown & Co Ltd*** (supra).

9. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **16th** day of **NOVEMBER 2017**

In the presence of Ms Beth Ndorongo holding brief for Mr Muraguri for the Plaintiff and in the presence of the Defendant in person

Court clerk Njue/Leadys

Y.M. ANGIMA

JUDGE

16.11.17