



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 255 OF 2017

NYABOLA ADEL JOSHUA.....PLAINTIFF

VERSUS

DORCAS MUTHONI KAIRADEFENDANT

RULING

(An application for injunction to restrain the defendant from interfering with plaintiff's quiet possession and use of suit property; prima facie case established; application allowed)

1. This ruling is in respect of plaintiff's Notice of Motion dated 19th June 2017. The following orders are sought:

a) Spent.

b) Spent.

c) That the Officer Commanding Baraka Police Post be directed to ensure compliance with the Orders of this honourable court.

d) That pending the hearing and determination of this suit, the honourable court be pleased to issue a temporary injunction restraining the Defendant herein whether by herself, her agents and/or servants from invading, trespassing, grazing, cultivating or in any way whatsoever interfering with the plaintiff's quiet possession and use of L.R No. NJORO/NGATA BLOCK 7/891 (CHUMO) which is currently occupied by the plaintiff.

e) That costs of this application be in the cause.

2. The application is brought under Order 40 rules 1, 2, 3 and 9 of the Civil Procedure Rules among other cited legal provisions. It is supported by an affidavit sworn by the plaintiff on 19th June 2017. He deposed that he is the registered proprietor of the parcel of land known as Njoro/Ngata Block 7/891 (Chumo) and has been occupying and cultivating it since the year 2016. He has annexed a copy of the title deed and a copy of certificate of official search as at 7th June 2017 as proof of ownership. He further deposes that the defendant trespassed onto the property in May 2017 and started carrying out cultivation thereon. Despite efforts to persuade the defendant to leave the property and despite the matter being reported to police, no action has been taken against the defendant and the defendant has not vacated. The plaintiff thus seeks the orders prayed for in the application.

3. When the application came up for inter parte hearing, the court was satisfied that the defendant had

been served. The defendant filed no response to the application and did not attend the hearing. The application thus proceeded unopposed.

4. I have considered the application. It is unopposed. Consequently, the evidence placed before the court by the applicant is unchallenged. In an application for an interlocutory injunction, the applicant must satisfy the test in **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A 358**. He must establish a *prima facie* case with a probability of success. Even if a *prima facie* case is established, an injunction would not be issued if damages can adequately compensate him. Finally, if the court is in doubt as to the answers of the above two tests then the court would determine the matter on a balance of convenience. As was recently held by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, all the three **Giella** conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially and that if *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration.

5. I am satisfied that the applicant has demonstrated that he owns the suit property and that the defendant has trespassed on to it and started cultivating on it. I am thus satisfied that the applicant has a *prima facie* case with a probability of success. Damages will not adequately compensate the applicant if he is deprived of the use of his property and the opportunity to farm it.

6. In view of the foregoing, I make the following orders:

a) Pending the hearing and determination of this suit, an injunction is hereby issued restraining the Defendant herein whether by herself, her agents and/or servants from invading, trespassing, grazing, cultivating or in any way whatsoever interfering with the plaintiff's quiet possession and use of L.R No. NJORO/NGATA BLOCK 7/891 (CHUMO).

b) Costs to the plaintiff.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of November 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Mbiyu holding brief for Mr. Otieno for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistants: Gichaba and Lotkomoi