



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 356 OF 2017**

**JOSHUA SAMBIYENI LEPARACHAO.....PLAINTIFF**

**VERSUS**

**FRANCIS EDIKA LEPARACHAU.....DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; applicant being registered owner of suit premises and claiming that the respondent has invaded it; no response filed by the respondent; application for injunction allowed)***

1. This suit was commenced by way of a plaint which was filed on 21 September 2017. In his plaint, the plaintiff has pleaded that he is the absolute proprietor of the land parcel Samburu/Suguta Marmar A/126 situated in Samburu County. He has averred that the defendant has started encroaching into the said premises and has started cultivating and cutting down trees, and has occupied part of the property. In this suit, the plaintiff has inter sought orders that the defendant be permanently enjoined from the suit property and for an order of eviction.
2. Together with the plaint, the plaintiff filed an application seeking to have the defendant restrained from entering, occupying, alienating, developing, wasting, constructing, trespassing or otherwise interfering with the suit property pending hearing and determination of the suit. In the same application, he has also sort orders of permanent injunction and orders of eviction. It is that application which is the subject of this ruling. Despite being served, the defendant/respondent has not replied to the application and has indeed not even entered appearance to this suit. The only material that I have is therefore that presented by the applicant.
3. I note that the application herein, apart from the prayer for an interlocutory injunction, seeks more or less the final orders sought in the plaint. I am afraid that at this stage of the proceedings, the only prayer I can be able to entertain is the prayer for an interlocutory injunction pending hearing of the suit. The prayers of permanent injunction and eviction, sought in the application, will have to await a final determination of the case.
4. The principles upon which an application for interlocutory injunction is determined, were established in the case of ***Giella vs Cassman Brown (1973) EA 358***. The applicant needs to demonstrate a prima facie case with a probability of success and also show that he stands to suffer irreparable loss if the order of injunction is not granted. Where the court is in doubt, it will decide the application on a balance of convenience.
5. In the supporting affidavit, the applicant has annexed a copy of his title deed to show that he is the absolute owner of the suit premises. He has deposed that the respondent has illegally occupied his land and when he asked him why, he became violent and threatened to attack him and his family. He has deposed that he has made several requests to have the respondent vacate the suit property in vain.
6. I have no reason to doubt that the plaintiff is the absolute proprietor of the suit premises. I have seen the title deed displayed by him. As proprietor, only he has the right to use and occupation of the premises and any other person occupying the same can only legally do so with his permission. The applicant has deposed that the respondent has taken possession of the suit premises without his permission. The respondent has not filed anything to give reasons why he should be in possession and occupation of the suit premises or demonstrate any other right over the suit premises. In my view, the applicant has established a prima facie case with a probability of success. If the respondent continues with his apparently illegal occupation of the suit premises, there is risk that he may cause wastage of the same and cause irreparable loss to the applicant.
7. For the above reasons, I am of the view that the applicant is entitled to the prayer for an interlocutory injunction pending hearing and determination of this suit. I therefore allow prayer 2, which is the prayer for an interlocutory injunction. The applicant will also have the costs of this application.
8. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 9<sup>th</sup> day of November 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**

Mrs. Oliech holding brief for Mr. Masara for the plaintiff/applicant.

No appearance for defendant/respondent.

Court Assistant: Carlton Toroitich.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**