



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

**AT NAIROBI**

**ELC SUIT NO.899 OF 2015**

**JANE WAITHERA NJOROGE.....PLAINTIFF**

**VERSUS**

**EVANSON KARANJA THIANI.....DEFENDANT**

**RULING**

1. The plaintiff is the registered owner of all those parcels of land known as L.R.No.Dagoretti/Mutuini/1067 and L.R No. Dagoretti/Mutuini/1068 (hereinafter referred to as “the suit properties”). The plaintiff brought this suit against the defendant on 22<sup>nd</sup> September, 2015 seeking vacant possession of the suit properties.

2. In her plaint, the plaintiff has averred that pursuant to a court order issued on 8<sup>th</sup> May, 2008, she was registered as the proprietor of the suit properties while the defendant was the registered as the proprietor of L.R No. Dagoretti/Mutuini/1065 and L.R No. Dagoretti/Mutuini/1066. The plaintiff has averred that the suit properties are adjacent to the defendant’s parcels of land aforesaid. The plaintiff has averred that the defendant has occupied and refused to vacate the suit properties and has prevented her from selling the same by threatening potential purchasers with violence.

3. The plaintiff has averred that the defendant has refused to vacate the suit properties because they are next to a road and as such more valuable compared to the two parcels of land owned by the defendant.Together with the plaint, the plaintiff brought an application by way of Notice of Motion dated 22<sup>nd</sup> September, 2015 seeking an order of vacant possession of the suit properties and an order that the officer commanding Karen Police Station does supervise compliance with the order.

4. The application is supported by the affidavit of the plaintiff sworn on 22<sup>nd</sup> September, 2015.The application has been brought on the grounds that the defendant has trespassed on the suit properties and erected structures thereon. The plaintiff has averred that the defendant is continuing with construction of more structures on the suit properties without any right to do so.

5. The plaintiff has annexed to her affidavit in support of the application among others, copies of title deeds for the suit properties in her name, copies of certificates of official search on the registers of the suit properties, a copy of a decree dated 8<sup>th</sup> May, 2008 issued by the Principal Magistrates Court at Kikuyu in Misc. Suit No. 3 of 2008 and a copy of certificate of confirmation of grant issued by the Principal Magistrates Court at Kikuyu on 20<sup>th</sup> June, 2012 in Succession Cause No. 5 of 2012.

6. The application is not defended. A replying affidavit was filed in court on 23<sup>rd</sup> October, 2015

purportedly by the defendant. When the application came up for hearing on 19<sup>th</sup> December, 2016, the defendant denied any knowledge of the said affidavit. The court gave the defendant 30 days within which to file a replying affidavit and expunged from the court record, the said replying affidavit which the defendant had disowned.

7. When the application came up for hearing again on 28<sup>th</sup> March, 2017, the defendant did not attend court. The defendant had also not filed a replying affidavit. Since the hearing date was given in court in the presence of the defendant, the court allowed the plaintiff to proceed with her application.

8. In his submission in support of the application, the plaintiff's advocate relied entirely on the plaintiff's affidavit in support of the application and urged the court to allow the application as prayed.

9. I have considered the plaintiff's application together with the affidavit filed in support thereof. The orders sought by the plaintiff are in the nature of a temporary mandatory injunction pending the hearing of the suit. The principles upon which this court exercises its discretion in applications for a temporary injunction are now well settled. In the case of Giellavs. Cassman Brown & Co. Ltd (1973) EA 358, it was held that an applicant for a temporary injunction must establish a prima facie case with a probability of success and the injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages. It was held further that if the court is in doubt as to the foregoing, the application would be determined on a balance of convenience.

10. An applicant for a temporary mandatory injunction like in the present case must show that he has a very strong case that is likely to succeed at the trial. The likelihood of success must be higher than that which is required for a prohibitory injunction. The general principles which the court apply in applications for interlocutory mandatory injunction were set out in the case of Locabail International Finance Limited v Agro-Export (1988) 1 All ER 901, where the court stated that:

*A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thinks that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a march on the Plaintiff. Moreover, before granting a mandatory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard that was required for a prohibitory injunction.*

In the case of Shepherd Homes Ltd. –vs.-Shandahu [1971] 1 Ch.304, Megarry J. stated as follows;

*“It is plain that in most circumstances a mandatory injunction is likely other things being equal, to be more drastic in its effect than a prohibitory injunction. At the trial of the action, the court will of course grant such injunction as the justice of the case requires; but at the interlocutory stage, when the final result of the case cannot be known and the court has to do the best it can, I think the case has to be unusually strong and clear before a mandatory injunction can be granted even if it is sought to enforce a contractual obligation”.*

11. On the material before the court, I am satisfied that the plaintiff has met the threshold for granting the orders sought. The plaintiff has demonstrated that she is the registered owner of the suit properties. The plaintiff and the defendant acquired their respective parcels of land pursuant to a court order. The said court order has not been set aside. The plaintiff has contended that the defendant has entered her parcels of land without her permission and has erected structures thereon. The plaintiff has contended that the defendant has refused to vacate the suit properties even after being asked to do so.

12. The defendant has not responded to the application. The averments contained in the plaintiff's affidavit in support of the application are not controverted. The plaintiff having established that she is the registered owner of the suit properties and that the defendant has entered thereon and occupied the same without her permission, in the absence of any justification from the defendant of his occupation of the suit

