



**REPUBLIC OF KENYA**

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

**E.L.C. CASE NO. 25 OF 2017 (ORIGINATING SUMMONS)**

**EMBU COUNTY GOVERNMENT.....PLAINTIFF**

**VERSUS**

**JIM REEVES GITONGA NJIRU.....DEFENDANT**

**RULING**

1. By a notice of motion dated 30<sup>th</sup> August 2017 the Plaintiff sought the following orders against the Defendant;

- a. That this application be certified as urgent and the same be heard ex-parte in the first instance due to its urgent nature.*
- b. That a further injunction to issue restraining the Defendant, whether by himself or his agent or his servants or any other person claiming under them (sic) from entering, trespassing, occupassing, (sic) possessing, alienating, cultivating, cutting barbed fence (sic), cutting any nappier grass, destroying the cattle dip, digging away trenches or holes or in any way interfering or in any way dealing with property namely L.R No. Kyeni/Mufu/3195 pending the hearing and determination of this suit.*
- c. An order be issued directing to (sic) the Officer Commanding Runyenjes Police Station (OCS) to enforce the order forthwith against the Defendant/Respondent.*
- d. The cost (sic) of this application to be borne by the Respondent.*

2. The said application was supported by an affidavit sworn by the County Secretary of the Plaintiff in which it was stated that the Defendant was interfering with the suit property by entering, encroaching and trespassing thereon; cutting down bananas and nappier grass; cutting down the fence and barbed wire; and cultivating and digging trenches. It was further stated that the Defendant was about to demolish the cattle dip on the suit property.

3. The said application was opposed by the Defendant who filed a replying affidavit in person. He denied all the factual allegations in the Plaintiff's said application and pointed out that the orders sought restraining him from entering, trespassing, occupying or possessing the suit property were denied by the court in its ruling of 10<sup>th</sup> May 2017. The Defendant further stated that prior to the filing of the suit, the suit property was not idle land as it was being utilized by the family of the late Njiru Tama.

4. The main question for determination herein is whether or not the Plaintiff has made out a case for the grant of an order of interlocutory injunction as set out in the case of **Giella v. Cassman Brown & Co Ltd**

**1973 [EA] 358.** The court would like to point out from the onset that it shall not reconsider the prayers which were declined on 10<sup>th</sup> May 2017. The court will therefore consider only the new allegations and prayers.

5. In the Plaintiff's supporting affidavit, there are several photographs which have been exhibited. The photographs show a barbed wire fence and cattle dip structure which appears to be dilapidated. There is no indication that the said structure is in the process of demolition. Although some parts of the fence appear to be in a state of disrepair, there is no indication of demolition or destruction. The barbed wire appears to be on site. The court is not satisfied that the allegations put forth by the Plaintiff removed and carried away the barbed wire have been established.

6. The court has noted that there is an assessment report by an Agricultural Extension Officer which indicates damage to bananas and nappier grass. There is no statement in the report on the ownership of the said bananas and nappier grass. It was disputed during the hearing of the application whether they were planted by the community or the Defendant's family.

7. . The court has considered the material on record and is far from satisfied that the Plaintiff has made out a *prima facie* case with a probability of success. The court is also far from satisfied that the alleged damage cannot be adequately compensated by an award of monetary damages. The value of the crops, barbed wire and other structures can be quantified and compensated for in monetary terms. That is not, however, to encourage the Defendant to destroy any property which may be in dispute but an assessment of the applicable principles against the evidence on record.

8. The upshot of the foregoing is that the court finds no merit in the Plaintiff's notice of motion dated 30<sup>th</sup> August 2017 and the same is hereby dismissed in its entirety. Costs shall be in the cause.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **2<sup>nd</sup>** day of **NOVEMBER, 2017**

In the absence of parties.

Court clerk Njue/Leadys

**Y.M. ANGIMA**

**JUDGE**

**02.11.17**