



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT GARISSA

ELC NO. 52 OF 2017

MWASI MUSYOKA.....PLAINTIFF/APPLICANT

VERSUS

MWENGA MUNUVE.....DEFENDANT/RESPONDENT

RULING

The application before me is the Notice of Motion brought under Certificate of Urgency dated 17th July, 2017. The applicant is seeking the following orders:

(a) (spent)

(b) THAT a temporary order of injunction be issued restraining the defendant whether by himself, his agents, employees, family members or who else from trespassing or fencing, sub-dividing the plaintiff's suit lands and claiming ownership of the suit lands situated at different places i.e Kyethani farm, Kyunyu farm, Hivanguu village and Kwamulungu village respectively all at Nzanzeni location, Tseikuru District in Kitui County within the Republic of Kenya until the hearing and determination of this application.

(c) THAT a permanent order of injunction be issued restraining the defendant whether by himself, his agents, employees, family members or who else from trespassing or fencing, sub-dividing the suit land and claiming ownership of the suit lands and/or in any manner interfering with the plaintiff's un-surveyed lands situated at different places ie Kyethani farm, Kyungu farm, Hiva Nguu village, and Kwamulungu village respectively all at Nzanzeni location, Tseikuru District in Kitui County within the Republic of Kenya until the hearing and determination of this suit.

(d) Cost of the application be provided for.

The application is supported by the affidavit of the applicant sworn on 17th July 2017 and grounds shown on the face of the said application. In the said affidavit, the applicant avers that he inherited the un-surveyed parcels of land at Kyethani and Kyunyu farm from his late father one Musyoka Munuve who passed on in the year 1993. He stated that he bought the third parcel of land situated at Kwamulungu village where he built a permanent home in the year 1994 or thereabout from the defendant/respondent at a consideration of Ksh.11,000/=.

The respondent on his part filed a replying affidavit in which he denied the applicants averments in the supporting affidavit. The respondent stated that he is the owner of three parcels of un-surveyed land

situated at Kyethani farm, Kyungu farm, and Kwamulungu village in Mwangeni sub-location and that the applicant has trespassed into the three parcels of land without his consent. The respondent further stated that the Anzauni clan sub-divided the un-surveyed pieces of land to them and that the plaintiff/applicant sold his portions to known and unknown persons.

I have considered the averments in the affidavit evidence by the applicant and the respondent. I have also perused the application and the pleadings herein. The applicant is seeking an injunction order under Order 40 Rule 1 (a) and (b) and Section 3 and 3a CPA. It is now well settled that before granting an equitable relief of injunction the court must satisfy itself that the applicant has established the three principles as set out in the celebrated case of **Grella –vs- Cassman Brown Limited (1973)**.

The three principles are as follows:

1. Prima facie case with high chances of success at the hearing.
2. Damages could not be an adequate remedy.
3. Where the court is in doubt, it shall decide the matter on a balance of convenience.

Applying the three principles, I am not persuaded that the applicant has demonstrated that he has high chances of success at the main hearing. He has not also shown that damages would not be an adequate remedy should the orders being sought are denied. Applying the last principle, I find that the application should be disallowed which I hereby do. In the upshot, the application dated 17th July 2017 is hereby dismissed with costs to be in the cause.

Read and Signed in the open court this 2nd day of November 2017.

E.C Cherono(Mr.)

ELC Judge

In the presence of:

1. Ijabo – clerk
2. Applicant in person
3. Respondent in person