



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 115 OF 2017**

**PAUL KIPKURUI KOSKEI .....1<sup>ST</sup> PLAINTIFF**

**PHILIP KOCHIL.....2<sup>ND</sup> PLAINTIFF**

**(Suing for and on behalf of themselves and as the legal administrators of the estate of KIPKOSKEI  
ARAP MASE (DECEASED))**

**VERSUS**

**STEPHEN SAGIRUK .....1<sup>ST</sup> DEFENDANT**

**PAUL RONO.....2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR NAKURU.....3<sup>RD</sup> DEFENDANT**

**RULING**

***(An application for an injunction to restrain the defendants from proceeding with construction of a road through the suit property; application allowed)***

1. This ruling is in respect of plaintiff's Notice of Motion dated 10<sup>th</sup> March 2017. The application seeks the following orders:

***1. Spent.***

***2. Spent.***

***3. That the honourable court be pleased to stop, restrain and injunct the respondents by themselves, their servants, employees, contractors and or authorized agents from proceeding with the road construction through the applicants homestead on land parcel LR N. Nakuru/Olenguruone/Chepakundi/1381 pending the hearing and determination of this suit.***

***4. That the costs herein be provided for.***

2. The application is supported by an affidavit sworn by the 1<sup>st</sup> plaintiff on 10<sup>th</sup> March 2017. He deposed that he is the administrator of the estate of Kipkurui Arap Mase (deceased), his late father. The deceased was the registered proprietor of the parcel of land known as Nakuru/Olenguruone/Chepakundi/1381 (the suit property) which was fully inherited by the 2<sup>nd</sup> plaintiff pursuant to Certificate of Confirmation of Grant dated 26<sup>th</sup> August 2015. He annexed a copy of the Land Certificate and a copy of the Certificate of

Confirmation of Grant. He further deposes that the 1<sup>st</sup> defendant is the plaintiff's neighbour since he owns an adjacent plot being Nakuru/Olenguruone/Chepakundi/1471 while the 2<sup>nd</sup> defendant is also a neighbour. He accuses the respondents of influencing the construction of a road through the suit property instead of between the suit property and the other parcel. He exhibited a copy of an undated letter from the Assistant Chief, Chepakundi Sub-location wherein the 2<sup>nd</sup> plaintiff was given 60 days from 31<sup>st</sup> October 2015 to remove his houses which were said to be on the road. The plaintiffs fear that their houses will be demolished. They thus seek the orders in the application.

3. When the application came up for inter parte hearing the court was satisfied that the defendants had been duly served. There being no response from the defendants, the plaintiffs urged the court to allow the application. I have considered the application and the affidavit in support. I note that the 1<sup>st</sup> defendant entered appearance on 26<sup>th</sup> April 2017 but has not filed any defence to the suit or any response to the application. The Attorney General entered appearance for the 3<sup>rd</sup> defendant on 24<sup>th</sup> May 2017 but has similarly not filed any defence to the suit or response to the application. The application is thus unopposed.

4. 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 to issue 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. Based on the evidence placed before the court, I am satisfied that the parcel of land known as Nakuru/Olenguruone/Chepakundi/1381 was owned by Kipkurui Arap Mase and that the 1<sup>st</sup> plaintiff is the administrator of his estate. I am further satisfied that the said property was inherited by the 2<sup>nd</sup> plaintiff pursuant to Certificate of Confirmation of Grant issued on 26<sup>th</sup> August 2015 in Nakuru Succession Cause No. 107 of 2015 Estate of Kipkoskei Arap Mase (deceased). I am also satisfied on the basis of the uncontroverted evidence that there is a real threat of the plaintiffs' houses being demolished. The plaintiffs have thus established a *prima facie* case with a probability of success. Damages cannot adequately compensate them for the loss of their houses and loss of their land. They have made a case for an interim injunction.

6. Consequently, I grant an injunction restraining the respondents by themselves, their servants, employees, contractors and or authorized agents from proceeding with the road construction through the applicants homestead on land parcel LR N. Nakuru/Olenguruone/Chepakundi/1381 pending the hearing and determination of this suit. Costs to the plaintiffs.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 15<sup>th</sup> day of December 2017.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr. Gai for the plaintiffs/applicants

No appearance for the defendants/respondents

Court Assistant: Gichaba