



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**AT KERICHO**  
**ENVIRONMENT AND LAND CASE NO.46 OF 2015**  
**ALFRED KIPKOECH KORIR.....PLAINTIFF**  
**VERSUS**  
**MARY CHEROTICH BUSIENEL.....DEFENDANT**  
**RULING**

***(Application for injunction; principles to be applied; plaintiff having an allotment letter to property; defendant not opposing application; application allowed.)***

The application before me is the motion dated 28th September, 2015 filed by the plaintiff. It is an application brought inter alia pursuant to the provisions of Order 40 Rule 1 of the Civil Procedure Rules, 2010. It is an application for injunction vide which the plaintiff wants the defendant restrained from the suit property which is described as UNS. Residential Plot No. 172 - Kericho Municipality.

It is the plaintiff's case that she was issued with an allotment letter to this property on 18th June, 2012 and she paid the requisite fees. In the year 2015, her allotment letter got lost and she reported its loss to the police station. On 22nd September 2015, the defendant, without the authority of the plaintiff, trespassed into the suit property and started digging a pit latrine. It is the plaintiff's case that this is in violation of her proprietary rights. The plaintiff therefore wants the defendant restrained from all activities on the suit property pending hearing and determination of her suit.

The defendant has not filed anything to oppose the application and has not even entered appearance despite being duly served. The only material before me is therefore that tabled by the plaintiff.

To succeed in an application for injunction, an applicant needs to demonstrate a *prima facie* case with a probability of success and also show that she stands to suffer irreparable loss. If in doubt, the court will decide the application on a balance of convenience. These principles were laid down in the case of **Giella vs Cassman Brown (1973) EA 358.**

To her application, the plaintiff has annexed a copy of the allotment letter which I can see is dated 18th June, 2012. The defendant has not brought forth anything to demonstrate that she has any rights over the suit property. I am therefore of the opinion that the plaintiff has demonstrated a *prima facie* case with a probability of success. Unless restrained, the defendant will continue wasting the property which will cause loss to the plaintiff.

I therefore allow the application for injunction and issue the following orders :-

(a) That pending the hearing and determination of this suit, the defendant (and/or her servants/agents) is hereby restrained from entering, being upon, developing or making any structures, on the property described as UNS. Residential Plot No. 172 - Kericho Municipality.

(b). The plaintiff shall have the costs of the application.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 29TH DAY OF JANUARY, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**In the presence of:**

1. Mr. Brian Langat holding brief for Mr. G.B.M Moturi for the plaintiff/applicant.
2. Defendant- absent
3. Court Assistant- Mr. Kenei