



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 119 OF 2016

MONICAL MBERA ACHUTIPLAINTIFF

VERSUS

ZABLON ACHUTI1ST DEFENANT

HENRY KENYANYA ACHUTI2ND DEFENDANT

FRANCIS ACHUTI3RD DEFENDANT

RULING

(Plaintiff owning suit land; defendants chasing her out; application to injunct defendants from suit land allowed).

1. The plaintiff in this case is the wife of the 1st defendant. The 2nd defendant is her biological son whereas the 3rd defendant is her step-son. She has pleaded that she is the registered owner of the land parcels Dundori/Lanet Block 5/2360 and 2362 (New Gakoe) (the suit properties). It is averred that on 27 March 2016, the defendants without any colour of right proceeded to evict her from the suit properties and she has now been forced to rent a house. In the suit, she has asked for orders of permanent injunction against the defendants and all those who claim under them.

2. Together with the suit, the plaintiff filed an application seeking orders to have the defendants restrained by an order of injunction from accessing or visiting the suit properties. In her supporting affidavit, the plaintiff has averred that the defendants have accused her of witchcraft and proceeded to evict her. She annexed title deeds showing that she owns the suit properties.

3. Despite being served, the defendants did not file anything to oppose the motion.

4. I have considered the matter. In an application of this nature, the court considers whether the applicant has laid out a prima facie case with a probability of success; whether the applicant stands to suffer irreparable loss if the injunction is not granted; and if in doubt, the application will be decided on a balance of convenience. These principles were laid out in the case of ***Giella vs Cassman Brown (1973) EA 358.***

5. I have seen that the plaintiff owns the suit properties. The matter is of course a little complicated by virtue of the fact that the defendants appear to be her family and could be on the land by virtue of that relationship. However, the defendants have absolutely no right to evict the plaintiff from property that she

owns. If they are disturbing the plaintiff on property that the plaintiff owns, the relationship between them takes a backseat. The defendants have not tabled anything to refute the claims of the plaintiff and have not demonstrated that they are entitled to evict the plaintiff from property that she owns.

6. I therefore allow this application. I order the defendants to stay away from the suit properties until the conclusion of this suit. The plaintiff is at liberty to take over the suit premises and be in occupation for the duration of the suit to the exclusion of the defendants.

7. The plaintiff shall also have the costs of the application.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 12th day of July, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

No appearance on part of M/s S.M. Nyagaka & Co. for applicant but applicant present.

N/A on part of defendants/respondents who have not entered appearance.

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU