



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 137 OF 2016

MARA NORTH HOLDINGS LTD.....PLAINTIFF

VERSUS

JOSEPH K. NAISHODEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiff leasing certain land from the defendant; defendant interfering with it; defendant not filing anything to demonstrate that he has a right to interfere with the plaintiff's possession of the suit land; plaintiff annexing the lease in issue; prima facie case established; application allowed).

1. This suit was commenced by way of plaint filed on 20 April 2016. The plaintiff is a limited liability company engaged in the business of providing game drives and other tourism excursions to tourists on parcels of land that it owns or has leased from various land owners in the Masai Mara. It has pleaded that it has leased from the defendant the land parcel Cis-Mara/Koiyaki Dagurugurueti/330 (hereinafter the suit land) for a term of 13 years through a lease dated 20 March 2012 and registered on 23 April 2012. It is pleaded that in the month of January and February 2016, the defendant made oral threats to the plaintiff's directors that he intends to take over control and possession of the suit land. It is contended that he also threatened to bring his livestock into the suit land, construct a house and fence the property. It is pleaded that the defendant has put these threats into action and has commenced the construction of a fence around the property and other structures. It is claimed that he has also brought in his livestock thus inhibiting the plaintiff from enjoying its rights under the lease. In the suit, the plaintiff wants the defendant restrained by way of a permanent injunction from the suit land.

2. Together with the plaint, the plaintiff filed an application for an interlocutory injunction seeking to have the defendant restrained from the suit land pending hearing and determination of this suit. It is that application which is the subject of this ruling.

3. The defendant appointed counsel but did not file anything to oppose this application. Neither did his counsel appear to make any submissions during the inter partes hearing of the application. The only material I have is that supplied by the plaintiff.

4. In an application of this nature, for one to succeed, the court needs to be convinced that the applicant has made out a prima facie case with a probability of success; be convinced that the applicant stands to suffer irreparable loss if the injunction is not given, and if in doubt, decide the application on a balance of convenience. These principles were laid out in the case of ***Giella vs Cassman Brown (1973) EA 358***.

5. In this case, it is the assertion of the plaintiff that it does hold a lease over the suit property and therefore the defendant has no right to interfere with the same. I have seen the said lease which the plaintiff annexed in the supporting affidavit to this application. The defendant has not filed anything to contest the contention of the plaintiff that the plaintiff holds a lease over the suit land. He has thus not shown that he has any right to invade or utilize the suit land for the duration of the lease. I hold the view that the plaintiff has established a prima facie case with a probability of success. If the injunction is not issued, there is potential that the business of the plaintiff will suffer and the plaintiff stands to suffer irreparable loss.

6. From the foregoing, I am of the opinion that the application for injunction is merited and I allow it. I issue an order restraining the defendant from trespassing into the land parcel Cis-Mara/Koiyaki Dagugurueti/330 or in any other way interfere with the plaintiff's quiet possession of the same, or interfere with the plaintiff's use of the said land, pending hearing and determination of this suit.

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

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of October 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Chege holding brief for Mr. Oyomba for plaintiff/applicant

Mr . Biko holding brief for Mr. Atonga for defendant/respondent

Court Assistant : Janet

MUNYAO SILA

JUDGE

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