



**REPUBLIC OF KENYA**

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

**ELC CASE NO 241 Of 2014**

**FLORA OLA LIMITED**

**C/O KALE MAINA & BUNDOTICH ADVOCATE.....PLAINTIFF**

**VERSUS**

**KENNETH KIPCHOMUSO .....1<sup>ST</sup> DEFENDANT**

**THOMAS KOMEN RUTO .....2<sup>ND</sup> DEFENDANT**

**MUSA CHEMASE.....3<sup>RD</sup> DEFENDANT**

**RULING**

***(Application for injunction; Plaintiff claiming trespass against the defendants; defendants alleging that they are on the land courtesy of a third party; no proof of such allegation; third party not shown to be owner of suit land; plaintiff having title; prima facie case established; application for injunction allowed)***

This suit was commenced by way of plaint on 22 August 2014. In the suit, the plaintiff has pleaded that he is the owner of the land parcel Solai/Ndungiri Block 10/241 (Olbonata) (the suit land) which is land measuring about 16.188 Hectares. It is its case that on or about 25th-26th March 2014, and subsequent days thereafter, the defendants trespassed into the said land, destroyed the fence, and grazed their cattle. It is said that the defendants have persisted in their actions thus rendering this suit necessary. In the suit, the plaintiff has sought orders of permanent injunction to restrain the defendants from the said land, special and general damages for trespass, and costs.

Together with the plaint, the plaintiff filed an application for injunction to restrain the defendants from the suit land pending hearing and determination of the suit. That application is the subject of this ruling. The said application is supported by the affidavit of Kipngetich arap Korir Bett, a director of the plaintiff company. He has annexed title to the suit land to show that the plaintiff is the registered proprietor and has stated that the plaintiff intends to put up greenhouses for horticulture. It is said that the defendants have barred the plaintiff's servants from ploughing the land and have consistently and forcibly continued to allow their livestock to graze on it.

The defendants have filed a Statement of Defence and have opposed the application for injunction through a Replying Affidavit, sworn by the 1st defendant, and Grounds of Opposition. In the Defence, it is pleaded that the defendants are merely agents of one John Lokorio. It is stated that John Lokorio was sued in Nakuru ELC NO. 304 of 2012 (*Raymark Ltd v John Lokorio*) but the suit was withdrawn "under suspicious circumstances." Raymark Ltd is said to be the previous owner of the suit land. It is stated that

the plaintiff is now acting in cahoots with Raymark Ltd to deprive the defendants and their employer of their rights over the suit land. It is stated that their employer, is entitled to 424 acres of the suit land and that it is his livestock which is under the care of the defendants. It is said that the defendants are on the land as a matter of right. The deponent has gone further to state that the plaintiff's title is not lawful because he is aware that the original title, parcel No. 217, was the subject in the case between Raymark and John Lokorio, and an injunction was issued stopping any dispositions. It is his view that the application is aimed at fighting Raymark Ltd's war with John Lokorio.

In the Grounds of Opposition, it is said inter alia, that there is unfinished business which is in the case Nakuru ELC No. 634 of 2013, *Flora Ora Ltd v John Lokorio*, over the same subject matter. It is said that this is material, as the defendants are agents of John Lokorio. In his submissions, Mr. Karanja Mbugua for the defendants, inter alia submitted that the plaintiff is following the "small fish" instead of pursuing the principal.

Mr. Bundotich for the plaintiff was of the view that the plaintiff has established a prima facie case and is therefore entitled to the injunction.

I have considered the pleadings, the averments in the affidavits, and the arguments of counsel. To entitle one to an injunction, one needs to demonstrate a prima facie case with a probability of success, and if the court is in doubt, it will decide the matter on a balance of convenience.

The plaintiff holds title to the suit land. The defendants do not. The defendants have tried to hide behind one John Lokorio and have stated that they are on the land courtesy of his permission. If this is the case, there would have been nothing easier than for them to get an affidavit from John Lokorio stating this fact. Without an affidavit from John Lokorio, or any other relevant documentary evidence, I am unable to assume that the defendants are on this land courtesy of John Lokorio. Neither have the defendants sought to enjoin the said John Lokorio to this suit, either as defendant, Interested Party, or Third Party.

Even assuming that the defendants are on the land, courtesy of John Lokorio, from the evidence before me, John Lokorio is not an owner of the suit land, and neither has he filed any pleadings herein to claim it. I do not know why the defendants want to argue for the benefit of John Lokorio, when he himself, does not seem interested in this suit. Neither has any evidence of an injunction, or other order, stopping the transfer of the suit land to the plaintiff been displayed by the defendants. Neither do the defendants have any counterclaim to assert any title of their own.

The upshot of the above is that I am of the opinion that the plaintiff has established a prima facie case. I allow this application for injunction and issue the following orders -

- (i) *That pending the hearing and determination of this suit, the defendants and/or their servants/agents are hereby barred by an order of injunction, from entering, being upon, grazing animals, ploughing, or in any other way utilizing the land parcel Solai/Ndungiri Block 10/241 (Olbonata), or in any way threatening, harassing, and/or preventing the plaintiff from use of the land parcel Solai/Ndungiri Block 10/241 (Olbonata).*
- (ii) *That costs of the application shall be to the plaintiff.*

Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 22<sup>nd</sup> day of January 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**Presence of:-**

Mr Lawrence Karanja : present holding brief for Mr Bundotich for plaintiff.

Mr Karanja Mbugua : present for defendants.

Emmanuel Maelo : Court Assistant.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**