



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC 21B OF 2015**

**WILSON KIPTOO LEITICH** (Suing in his own and in his representatives Capacity as Chairman Nakuru District/County of Kenya African Nation Union).....**PLAINTIFF**

**VERSUS**

**ERIC MUCHAI** .....**DEFENDANT**

**RULING**

***(Application for injunction; principles to be applied; applied contending that it owns suit land and that the defendant has invaded it; no proof that the plaintiff owns the suit land; no prima facie case established; application dismissed)***

1. The application before me is that dated 28 January 2015 filed by the plaintiff. It is essentially an application for injunction brought inter alia under the provisions of Order 40 Rule 1(a) and (b) of the Civil Procedure Rules. The plaintiff, pending hearing of this suit, wants the defendant restrained from the land described as parcel number Njoro/Bondeni Plot No.101 (KANU Office). The application is supported by the affidavit of Wilson Kiptoo Leitich who is the Chairman of the Kenya African National Union (KANU which is a political party) Nakuru District. He has deponed that on 3 December 2014 while he was driving along the Nakuru-Njoro road, he saw an unknown developer fencing the party's property. He then went to the police station to report the matter. It is his view that the defendant does not have any right to the property. To the affidavit, he has annexed a map of the area, a letter from the National Police Service and a list of Branch Offices and their officials.

2. So far, the defendant has not entered appearance to the suit and has not replied to the subject application. That does not however mean that the application must automatically succeed. This being an application for injunction, the principles laid down in the case of ***Giella v Cassman Brown (1973) EA 357***, apply. In the said case, it was held that to succeed in an application for injunction, one needs to demonstrate a prima facie case with a probability of success, and further, the court needs to be convinced that the applicant stands to suffer irreparable loss. If in doubt, the court will decide the application on a balance of convenience.

3. The case of the plaintiff as pleaded is that it is the owner of the suit property; that the defendant is not a member of KANU and neither is he a bona fide purchaser of the suit property; that the defendant has trespassed into the property; and that the efforts of the plaintiff to get the defendant out of the suit property have been in vain. In the suit, the plaintiff wants a declaration to be issued that the suit land belongs to the political party and eviction of the defendant.

4. Although the plaintiff claims to be owner of the suit land, I have not seen any proof of ownership of the

same. There is no title deed or any document, attached to the affidavit of Mr. Leitich, that shows that the suit land is owned by the plaintiff. I have even ventured to the plaintiff's list of documents and I have seen no document of title in favour of the plaintiff. The only item displayed is a map of the area, which of course, does not indicate who is the owner of the suit land, but only demonstrates its location. I do not see how the letter from the police (which simply asked the plaintiff to avail a list of KANU officials in Njoro Sub-County), and the list of members tendered by the plaintiff, demonstrate that the plaintiff is owner of the suit property. In short, there is nothing before me that shows that the plaintiff owns the suit land. I am not therefore convinced that the plaintiff has laid down a prima facie case with a probability of success. Not being in doubt, it is not necessary for me to consider the balance of convenience.

5. I have no option but to dismiss this application. It is hereby dismissed, but since there was no response to it, I make no orders as to costs.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 11th day of March 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of:-**

Mr Kipsang for applicant

Defendant: absent

Emmanuel Juma: Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**