

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 26 OF 2015

C T..... PLAINTIFF/APPLICANT

VERSUS

S K N..... DEFENDANT/RESPONDENT

RULING

1. The applicant is the wife of the respondent in this case. The applicant brought a notice of motion dated 2/3/2015 in which she seeks a temporary injunction to restrain the respondent from interfering with her quiet enjoyment of land parcel No. [particulars withheld] pending the hearing and determination of this suit. She also seeks an order of inhibition to issue prohibiting any dealings on the aforementioned parcel (suit land).

2. The applicant who is the third wife of the respondent contends that on 25/2/2015 the applicant brought surveyors to the suit land to subdivide it with intention of giving the same to the children of his first and second wives. She also contends that the respondent intends to evict her from the suit land which is her matrimonial home where she has lived for the last 40 years.

3. The respondent has opposed the application based on the replying affidavit sworn on 30/4/2015 and filed in court on the same day. The respondent contended that the applicant's application is misconceived as what he was doing by bringing surveyors to the suit land was to implement a court order which was issued in *Kitale HCCC No. 35 of 2008* where it was decreed that the respondent gives 5 acres of the suit land to his two sons from his third wife the applicant herein. The respondent further contends that he cannot be enjoined from implementing a lawful court order and that the applicant's suit has no basis.

4. I have gone through the applicant's application and the respondent's opposition to the same. I have also considered the submissions by counsel for the parties. The principles for grant of a temporary injunction were set out in the celebrated case of *Giella -vs- Cassman Brown 1973 EA 358*. Firstly, the applicant has to demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not normally be issued unless the applicant might otherwise suffer irreparable loss which may not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

5. In the instant application, the issue for determination is whether the applicant has met the threshold in the *Giella -vs- Cassman Case (supra)*. The applicant contends that the respondent brought surveyors to the suit land with an intention of subdividing the land and give it to children of his first and second wives. Contrary to the applicant's allegations, the respondent has demonstrated that he took the surveyors to the suit land to subdivide the suit land and give 5 acres to the applicant's two sons. The respondent annexed a letter dated 18/2/2015 in which the county survey office was calling parties to *HCCC No. 35 of 2008* to be present on 25/2/2015 when the court order was to be implemented. In *Kitale HCCC No. 35 of 2008* the respondent had sued his two sons. On 20/5/2014 a consent order was recorded which gave the two sons 5 acres. A surveyor was to go to the suit land and excise 5 acres from the suit land to be given to the respondent's two sons. The two sons are sons of the applicant. It is therefore clear that the applicant was not being sincere in claiming that the purpose of the survey was not give land to the children of the respondent's first and second wives.

6. The respondent has stated that he has no intention of evicting the applicant as alleged. The applicant is on the suit land and she is not being evicted as claimed. She is seeking for injunctive orders and

declaration that she is entitled to remain on the suit land. The applicant has not established a prima facie case with probability of success. There will be no harm which she will suffer which will not be compensated in damages. I find that her application lacks merit. The same is hereby dismissed with no order as to costs as the parties herein are couples.

It is so ordered.

Dated, signed and delivered at Kitale on this **8th** day of **June, 2015**.

E. OBAGA

JUDGE

In the presence of Mr. Yano for Respondent.

Court Clerk – Isabellah.

E. OBAGA

JUDGE

8/6/2015