

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 9 OF 2015

ZEPHANIA SAUL KHISA.....1ST PLAINTIFF

RISPER NAFULA.....2ND PLAINTIFF

VERSUS

EVANS MUSHIKANI.....DEFENDANT

RULING

1. The applicants filed an application seeking an injunction restraining the respondent from interfering with **Plot No. 652 at Zea Settlement Scheme**. The applicants contend that they are the beneficial owners of **Plot No. 652 at Zea Settlement Scheme** (suit land) which they bought from a third party. The suit land is well demarcated on the ground but they are yet to obtain title. On 19/1/2015 they learnt from their neighbours that the respondent had ploughed the suit land and erected some structures on the land without their authority. It is on this basis that they seek an injunction against the respondent.

2. The application by the applicants is opposed by the respondent through replying affidavit sworn on 4/2/2015. The respondent contends that he ploughed his own land which is **Plot No. 653** and that he has not interfered with the applicants' land. The respondent contends that he has put up structures on his own land where he is staying.

3. Before the applicants' application could be heard, the advocates for the parties agreed to send a Government Surveyor to the ground to ascertain the status of occupation of the suit land as well as Plot No. 653 at Zea Settlement Scheme. The surveyor went to the ground and filed his report in court on 18/5/2015.

4. I have considered the applicants' application as well as the replying affidavit and submissions by counsel. The principles for grant of a temporary injunction are now well settled by the case of **Giella - vs- Cassman Brown & Co. Ltd [1973] EA 358**. First an applicant must demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be issued unless otherwise the applicant will suffer loss which will 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 case there is no doubt that the suit land and Plot No. 653 are two distinct plots owned by the applicants and the respondent respectively. The applicants are alleging that the respondent had ploughed the suit land and erected structures on it. The surveyor who went to the ground ascertained the positions of the two plots. As asked by the court, he also ascertained the occupation of the two plots. He found out that the applicants were laying claim to Plot No. 653 instead of their own Plot No. 652 (suit land). The question which then arises for determination is whether the respondent can be enjoined from his own land. The answer is in the negative. The respondent has ploughed his own land. He cannot be enjoined from his own land. I therefore find that the applicants have not demonstrated that they have a prima facie case with probability of success. The suit land seems to have attracted a number of controversies. The respondent has annexed pleadings to his replying affidavit which show that the applicants and others have filed another suit being **Kitale ELC No. 117 of 2014** in which the plaintiffs seek injunctive orders against the respondent and others in respect of Plot No. 653 as well as another one. It is therefore clear that the applicants are not sure of what land they own or its exact location. To this extent, I find that the applicants' application for injunction is misconceived. The same is hereby dismissed with cost to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this **21st** day of **September, 2015**.

E. OBAGA

JUDGE

In the presence of M/s Munialo for Defendant/Respondent

Court Assistant – Winnie.

E. OBAGA

JUDGE

21/9/2015