



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 46 OF 2015

CATHERINE CHERONO KAPKOMOI.....PLAINTIFF

VERSUS

RAELI TIGIREI.....DEFENDANT

RULING

(Application for injunction; plaintiff being wife of registered owner; defendant not opposing the application for injunction; prima facie case established; application for injunction allowed)

1. This suit was commenced by way of plaint filed on 20 February 2015. Together with the plaint, the plaintiff filed an application for injunction which is the subject of this ruling.
2. The case of the plaintiff is that she is the wife of one Joshua Kapkamoi who is the registered owner of the land parcel Nakuru/Teret/398, land measuring 2.02 hectares which is approximately 5 acres. She has contended that her husband deserted the suit land about 10 years ago but left her and her children on the land. She has pleaded that about the year 2009, the defendant moved into the suit premises and has gradually taken about 3 acres thereof. She has stated that since her husband deserted, several people have been trespassing on the suit property including one Kiplangat Bii which led her to file suit against him. He has since vacated the land. The plaintiff has averred that the defendant's so has threatened them with violence and that they are now living in fear. She has also pleaded that the defendant has caused wastage on the land including cutting down more than 100 cypress trees and destroying the fence.
3. The prayers sought in the suit are for a declaration that the plaintiff is the lawful beneficial owner of the suit land; an eviction order against the defendant and a permanent injunction to restrain the defendant from the suit property.
4. The defendant has entered appearance but has not filed any other document to defend the suit or the application. Neither did her counsel appear at the hearing of the application. The only material before me is therefore that provided by the plaintiff.
5. The application before me is an application for injunction and I stand guided by the principles laid down in the case of **Giella vs Cassman Brown (1973) EA 358**. The Court of Appeal stated that to entitle one to an order of injunction, the applicant must demonstrate a prima facie case with a probability of success; demonstrate that he stands to suffer irreparable loss; and if the court is in doubt, it will decide the application on a balance of convenience.
6. I have assessed the material provided in this case. As I stated earlier, the facts as provided by the

plaintiff have not been controverted by the defendant. The plaintiff has demonstrated the title deed to the property which is in the name of her husband. Prima facie, as wife, she does have a beneficial interest in the land. The defendant has not given any reason as to why she claims the land and why she is on it. Given this position, I am of the view that the plaintiff has demonstrated a prima facie case with a probability of success. She stands to suffer irreparable loss, especially given that the defendant is engaged in destruction of the property. I have no reason to deny the plaintiff the injunction sought.

7. I therefore allow the application. I order the defendant to stay away from the suit property until the final determination of this suit. Costs of this application shall be to the applicant.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 8th day of October 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of : -

M/s Karen Wanderi for plaintiff/applicant: absent

Defendant: absent

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU