



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 41 OF 2014

KOGO FLATS LTD.....PLAINTIFF

VS

SAMMY CHERUNYA.....DEFENDANT

(Application for injunction and for mandatory orders; principles to be applied; plaintiff owner of suit land; no defence and no response to the application by the defendant; no sufficient material upon which the mandatory orders can be granted but adequate reasons given to warrant the defendant to be barred from the suit land pending hearing and determination of the suit; application for interlocutory injunction allowed.)

RULING

This is a ruling on an application for injunction filed by the plaintiff. In this application, the plaintiff wants the defendant to be restrained from destroying, putting up temporary structures, cutting down trees, or abusing and/or wasting the property Eldoret Municipality/ Block 15/1857 pending the hearing and determination of this suit. The applicant has also asked for mandatory orders compelling the respondent and his servants/agents to remove all structures that they have illegally erected on the suit land and do all necessary repairs to return the suit property in the position that it was before they embarked on its abuse and/or waste. The applicant also wants a prohibitory order to bar the respondent from further cultivating crops or erecting more fixtures on the suit property and an order for the respondent to immediately vacate the suit property. The application is grounded on the averments *inter alia* that the plaintiff is the owner of the suit land and that the defendant has illegally taken possession of the land.

The application is supported by the affidavit of one Sammy Boit arap Kogo, who is a director of the plaintiff company. In the main suit, the plaintiff has sought various orders, including orders of vacant possession, mesne profits, rent, general damages and costs.

The defendant despite being served with the suit papers and with the application herein, has not responded to the same. The application is therefore uncontested.

It will be observed from the prayers sought in this application that the plaintiff wants more than an interlocutory injunction. The plaintiff actually desires to have an order of mandatory injunction *inter alia* to have the defendant remove some structures and restore the premises to the condition that it was prior to these structures.

I do not think that I have sufficient material before me to warrant the issuance of these mandatory orders. I have no evidence as to when these structures were put up, or that such structures were put up by the defendant, and what condition the land was in, prior to those structures. I have seen from the certificate of title that the plaintiff became registered as owner of the suit land on 16 July 2013. This suit was instituted

on 13 February 2014. It may very well be that the structures therein were put up by the previous owner and not the defendant and it will be improper for me to assume that the structures were illegally erected by the defendant. I think I can only give that order after hearing the main suit.

I will therefore only treat this application as an application for interlocutory injunction and I will stand guided by the principles laid down in the case of ***Giella v Cassman Brown (1973) EA 358***. To be entitled to an injunction, an applicant must demonstrate a prima facie case with a probability of success, and if the court is in doubt, the matter will be decided on a balance of convenience.

In this case, I have seen that the plaintiff is the registered owner of the suit land. No defence has been filed by the defendant to give reasons as to why he is entitled to be on the suit land. That in itself is a clear demonstration that the plaintiff has a prima facie case. I see no reason why the defendant ought to remain on the suit land pending the hearing and determination of this suit.

I therefore allow this application and issue the following orders :-

(1) The defendant is hereby barred from entering, or being on the suit land, or ploughing or utilizing the suit land in any way either by himself or his servants/agents, pending the hearing and determination of this suit.

(2) The costs of the application shall be costs in the cause.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF APRIL 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

Miss J.J. Kiptanui holding brief for Mr. Chonge of M/s Rachier & Amolo Advocates, for plaintiff/applicant.

N/A for defendant who has not entered appearance.