



REPUBLIC OF KENYA

ELDORET

IN THE ENVIRONMENT AND LAND COURT OF KENYA

E&L 89 OF 2014

DANIEL KOSGEI CHESIREPLAINTIFF

VS

WISLEY NGETICHDEFENDANT

(Application for injunction; plaintiff seeking orders to restrain defendant from interfering with suit lands; plaintiff being registered owner; no reply filed by the defendant; application allowed)

RULING

This case was instituted by way of plaint filed on 27 March 2014. In the plaint, it is pleaded that the plaintiff is the registered proprietor of the land parcels Uasin Gishu/Illula/811 and Uasin Gishu/Illula/812. It is pleaded that the defendant has trespassed into the said land and the plaintiff has sought orders of permanent injunction against the defendant.

Simultaneously with the plaint, the plaintiff filed an application for injunction, which is the subject of this ruling. The application was argued on 23 April 2014, and since I was proceeding on leave, I allowed the application and reserved the ruling for delivery on 24 July 2014. The reasons are as follows hereunder.

In the application, the plaintiff has asked that pending the hearing of this suit, the defendant be restrained by way of an interlocutory injunction, from trespassing, wasting, constructing, cultivating, or otherwise interfering or dealing with the suit properties. He has also sought orders to have the OCS Kapsoya Police Post to enforce compliance of the order. The application is supported by the affidavit of the plaintiff.

In the affidavit, the plaintiff has deponed that on 28 January 2014, the defendant, without the plaintiff's authority or consent, entered into the suit properties and proceeded to plough the same using a tractor. It is this action that has made him come to court.

Despite being served with the pleadings and the application, the defendant has not entered appearance, has not filed defence, and has not responded to the subject application. The application is therefore not contested.

In the case of *Giella v Cassman Brown (1973) EA 358*, the court of appeal held that when faced with an application for injunction, the court needs to be satisfied that the applicant has demonstrated a prima facie case with a probability of success; be alive to the principle that an injunction will not normally be given unless damages are an inadequate remedy; and if in doubt, decide the matter on a balance of convenience.

In his supporting affidavit, the plaintiff annexed copies of titles to the suit properties. I have seen that he

is the absolute proprietor of the properties. Given that the defendant has offered no explanation as to why he is entitled to utilize the suit properties, I am of the view that the plaintiff has demonstrated a prima facie case with a probability of success. No doubt, he stands to suffer loss, if the defendant continues interfering with the suit land.

For the above reasons, I allow the application for injunction. The defendant by himself and/or his agents/servants are hereby restrained by way of injunction, from trespassing onto, wasting, constructing on, cultivating, remaining on, alienating or otherwise interfering or dealing with the parcels of land Uasin Gishu/Illula/ 811 and Uasin Gishu/Illula/812 pending the hearing and determination of this suit. I further direct the OCS Kapsoya Police Station to ensure the compliance of this order.

The costs of the application will be costs in the cause.

It is hereby ordered.

DATED AND DELIVERED AT ELDORET THIS 24TH DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

N/A for m/s J.K. Korir for plaintiff.

N/A for defendant who has not entered appearance.