



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 306 OF 2014

PRISCILLA NAFULA NDUMIA.....1ST PLAINTIFF

KEDIUS KEZZANDUMIA.....2ND PLAINTIFF

VS

NJOROGE MUIGA.....DEFENDANT

(Application for injunction; principles to be applied; applicant owner of suit land; no response from respondent; application allowed)

RULING

This suit was commenced by way of plaint filed on 7 October 2014 by way of plaint. In the plaint, the plaintiffs have pleaded that they are the owners of the land parcel Uasin Gishu/El Lahre Settlement Scheme/124 holding the property in trust for all other beneficiaries of the estate of the late Francis John Ndumia. They have averred that the defendant has placed an illegal restriction on the property and that the defendant has started interfering with the suit land. It is pleaded that the defendant has started excavating stones from the suit land and that unless he is stopped, he will cause irreparable loss to the suit land. The core prayers in the plaint are for orders to have the plaintiffs declared owners of the suit land.

Together with the plaint, the plaintiffs filed an application for injunction to stop the defendant from dealing with the suit land. In the supporting affidavit, the plaintiffs annexed photographs showing excavation of stones from the suit land and have stated that they are unable to use the property owing to interference by the defendant.

The defendant despite being served, has not entered appearance nor filed any response to the subject application. The application is therefore unopposed.

The principles upon which a court will assess an application for injunction were laid down in the case of ***Giella v Cassman Brown (1973) EA 358***. An applicant needs to demonstrate a prima facie case and if the court is in doubt, it will decide the application on a balance of convenience.

I have looked at the material tendered by the plaintiff. The plaintiffs have annexed a copy of the title deed and search which shows that they are the registered owners of the suit land. The defendant has not demonstrated any right to be on the property. In my view, the plaintiffs have showed a prima facie case with a probability of success. It is clear to me that if I do not issue the injunction, the defendant will continue excavating stones on the suit land which may end up causing wastage and irreparable damage to the suit land. I am of the opinion that this is a fit case for the issuance of an injunction.

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

(1) That pending the hearing and determination of this suit, an injunction is hereby issued restraining the defendant and/or his servants/agents/assigns from being upon, entering upon, ploughing, cultivating, excavating stones, farming, dwelling, selling, leasing, or in any other way dealing with the land parcel Uasin Gishu/El Lahre Settlement Scheme/124.

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

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF NOVEMBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. M.K. Rop holding brief for Miss Isiaho for Plaintiffs/Applicants.

Defendant – Absent (Has not entered appearance)