



REPUBLIC OF KENYA



KENYA LAW

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**Ogutu v Arogo (Environmental and Land Originating Summons
E004 of 2024) [2024] KEELC 4326 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4326 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2024**

E ASATI, J

MAY 21, 2024

BETWEEN

SIMON OMELA OGUTU APPLICANT

AND

SALINA AOKO AROGO RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion application dated 14th February, 2024. The application seeks substantially for an order temporary conservatory orders restraining the Respondent by themselves, agents, proxies or anybody acting through them from cutting trees, constructing, demolishing buildings and/or interfering with the Plaintiff's properties/possession/use of the suit land pending hearing and determination of the suit.
2. The application was not opposed or respondent to by the Respondent in any way.
3. I have read the Affidavits of Service filed. The same show that the Respondent was served with the application and on 22nd April, 2024, she was served with a hearing notice dated 20th April, 2024 for hearing of the application on 21st May, 2024. On 21st May, 2024 there was no attendance by or on behalf of the Respondent.
4. Counsel for the Applicant prayed that the application be allowed as the same was unopposed.
5. The grounds for grant of an interlocutory order of injunction as laid down in the case of *Giella -vs- Cassman Brown Co. Ltd* (1973) 358 are that the Applicant must establish a prima facie case with a probability of success, an interlocutory injunction will not normally be granted unless the Applicant would suffer irreparable injury which would not adequately be compensated in damages and that when the court is in doubt, it will decide the case on a balance of convenience.



6. No grounds are shown on the face of the Notice of Motion in support of the application. However, in the Supporting Affidavit, the Applicant states that he entered the suit land parcel No. Kisumu/buoye/1864 in the year 1988, build on it and planted trees. That the Respondent who is his neighbour has now descended on the said property and are cutting down trees, piling building materials and that he fears that his house may be demolished.
7. The photographs attached to the Supporting Affidavit show growing trees and others already cut down.
8. Given that the application is unopposed, I find that the Applicant has demonstrated sufficient grounds for preserving the status quo of the suit land and the property thereon pending hearing and determination of the suit (Originating Summons).

I therefore allow the application as follows:-

- i. An order of temporary injunction is hereby issued restraining the Respondent by herself or her agents from cutting down trees, constructing, demolishing buildings or destroying any property on the suit land or interfering with the Plaintiff's use thereof in any way, pending hearing and determination of the suit (Originating Summons).
- ii. Costs to the Applicant.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 21ST DAY OF MAY, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE

In the presence of

Obiero for the Applicant.

No appearance for the Respondent.

