



**Kibondori v Keror (Environment & Land Case E024 of 2024)
[2024] KEELC 3932 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3932 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E024 OF 2024**

**A OMBWAYO, J
MAY 16, 2024**

BETWEEN

CHARLES I. ONYANCHA KIBONDORI APPLICANT

AND

ANN D KEROR RESPONDENT

RULING

1. Charles I. Onyancha Kibondori (hereinafter referred to as the applicant) has come to this court by way of plaint praying for a permanent injunction to restrain the defendant Ann D Keror from trespassing upon Land Registration number Nakuru Olenguruone/Kiptagich /1158 vacant possession and eviction. The plaintiff prays for general damages for trespass and specific damages of Kshs1,500,000.
2. Accompanying the suit is an application for temporary injunction to restrain the respondent by herself, her agents servants, employees or other from entering into occupying, developing, harvesting selling, transferring, charging leasing out or dealings in any other manner in property title number Nakuru/ Olenguruone/Kiptagich/1158 pending the hearing and determination of the suit. The defendant was served but appears not to have replied.
3. I do find that the application is opposed by the respondent who filed the replying affidavit 5th April 2024 whose gist is that she has not encroached on the land but is there by virtue of an arrangement to exploit the said parcel of land.
4. There is an agreement signed by the parties where the applicant is required to compensate the defendant but the applicant has not brought it to the courts attention.
5. I have considered the application and the replying affidavit and do find that the respondent is in possession and utilization of the property and has developed the same extensively with the consent of the applicant and that the applicant has been paying the respondent a certain sum of money to enable her utilize the property and therefore do find that the applicant has not demonstrated that the



respondent is a trespasser. The applicant has not demonstrated that he will suffer irreparable harm if the injunction is not granted but the respondent has demonstrated that if the injunction is granted, it will amount to an eviction.

6. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella v Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions from Kenyan courts and more particularly in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

7. I do find that the applicant has not satisfied the principles for grant of temporary injunction and that the orders sought if granted would amount to an eviction and therefore i do dismiss the application with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF MAY 2024.

A O OMBWAYO

JUDGE

