



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 32 of 2008

GEOFREY MUGWANA MAINA (*Suing as the personal representative of*

MAINA MUGWANJA.....PLAINTIFF

VERSUS

VIRGINIA NGUNYI NGARI.....DEFENDANT

RULING

The applicant has moved the court for orders for injunction against the defendant and also for a prohibitory order to be lodged on land parcel No. Mbeere/Mbita/2451. The application is premised on the 3 grounds on its face and on the supporting affidavits of Geoffrey Mugwanja Maina dated 11/3/2008 and one dated 9/5/2008. It is opposed by the Respondent vide her replying affidavit dated 29/4/2008. The applicant had obtained Ex-parte orders on 12/3/2008 and the same have been in force. The parties were heard inter-partes on 17/9/2008 and this is now the ruling in respect of that application. According to the applicant, the land in question was registered in his late father's name. Him and his family live on the disputed plot. Both parties have conceded that there have been several proceedings in respect of the said land which do not however appear to have been concluded. They both agree that there are 2 applications for Judicial review where stay orders have been granted. They have not however said why those proceedings have not been concluded. The gist of the matter is that the ownership of the land is contentious and the cases which have been filed to determine the issue of that ownership have not been concluded. It is also noted that the applicant lives on the said plot which is where his late father and his family used to live before he died. The Respondent has not disputed that the applicant is actually in possession of the plot in question. In order for orders of injunction to issue, the applicant must prove one of the following:-

- (i) *That he has a prime facie case with high chances of success;*
- (ii) *That if the injunction is not granted he will stand to suffer irreparable loss which cannot be redressed by way of damages.*
- (iii) *That in case of doubt, the court to decide on a balance of convenience.*

Unfortunately, the applicant's counsel was rather casual in the manner she prosecuted this application. There was not the slightest mention of the above principles which were set out in the celebrated case of Grela –v- Cassman Brown. May be this was so because the party on the other side was unrepresented. This does not nonetheless lessen the need for serious preparedness by counsel in their applications.

Having said so, I wish to point out that, as stated earlier, the respondent is in occupation and has been in occupation of the land in question for some time. The law always favours the party in occupation when dealing with such matters. It is for only that one reason that I will allow this application plus the fact that there are several disputes over the same land and it is important that the land be preserved pending the hearing and determination of those suits.

For the foregoing reasons, I will allow the application dated 11/3/2008 and grant prayers 2 and 4 with costs in the cause.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 29th day of October, 2008.

In presence of;-



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