



Case Number:	Environment and Land Case 148 of 2021
Date Delivered:	23 Feb 2022
Case Class:	Civil
Court:	Environment and Land Court at Kapsabet
Case Action:	Ruling
Judge:	Michael Ngolo Mwanyale
Citation:	Natasha Cherotich Murgu (Legal Representative of the Estate of Hellen Kimurgor) v John Kibet Tallam & 7 others [2022] eKLR
Advocates:	Mr. Mely for the Plaintiff/ Applicant
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Nandi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Notice of motion application allowed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAPSABET**

**ELC CASE NO. 148 OF 2021**

**NATASHA CHEROTICH MURGO**

**(Legal Representative of the Estate of HELLEN KIMURGOR.....PLAINTIFF/ APPLICANT**

**VERSUS**

**JOHN KIBET TALLAM.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**KIPCHIRCHIR JONATHAN KIBET.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**FRANCIS KIPCHOGE KIURGAT.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**WILSON KIPKEMBOI KORIR.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**CHARLES KIPCHUMBA KERING.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**RICHARD TARUS.....6<sup>TH</sup> DEFENDANT/RESPONDENT**

**ELIAS KIPKORIR.....7<sup>TH</sup> DEFENDANT/RESPONDENT**

**THOMAS KIPTOO LELEI.....8<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. Before the court for determination is the Notice of Motion application dated 12<sup>th</sup> May 2021 seeking injunctive orders against the Defendant/ Respondents.

2. The orders sought in the application are: -

(a) Spent

(b) Spent

(c) Pending the hearing and determination of this suit, the Honourable court be pleased to grant an order of Temporary Injunction restraining the Defendants, by themselves, agents, servants and/ or anyone claiming under them from ploughing, Planting, Constructing houses, interfering, harassing remaining upon, moving into the suit land and/ or in any manner howsoever and/ or whatsoever interfering, alienating parcel of land number Muhoroni L.R. No. 21959/14.

(d) That the County Commandant Nandi County to ensure compliance of the said orders.

(e) Costs of this application be borne by the Defendants/ Respondents.

(f) Such further and/or other orders be made as the court may deem fit and expedient.

3. When the matter came up for hearing, *ex parte*, initially no inter orders were granted but eventually interim orders in terms of prayers 2 of the application were granted.

4. Upon establishment of this Court of Kapsabet, the matter was transferred and when the parties appeared before court, the firm of Bitok Sambu had entered appearance for the Defendants and filed a Replying Affidavit.

5. On 20<sup>th</sup> December 2021, parties were directed to file written submissions and a mention date of 27.1.2022 was given to confirm compliance. On 27<sup>th</sup> January, 2022 only the Plaintiff/ Applicant had filed the submissions and at the time of writing the Ruling the Defendant/ Respondent's submissions were not on the court file and the Ruling has not considered the Defendant/ Respondent's submissions.

#### **APPLICANTS CASE AND SUBMISSIONS.**

6. The Application is grounded on grounds *inter alia*: -

(i) That the Plaintiff is the Administrator of the Estate of the Late Helen Kimurgor and her rights over the suit lands are indefeasible and absolute and duly protected.

(ii) The Defendant/ Respondents invaded the suit land on 6<sup>th</sup> March, 2021, and were putting up temporary structure with intents to fully occupy, possess and be in actual use of the suit property.

(iii) In the past two years, the Defendants have been planting and cultivating in the property the Defendant has no claim/colour of rights whatsoever on the property.

The Plaintiff are her family stand to suffer irreparable over the illegal actions of the Defendants.

7. The said application is supported by the Supporting Affidavit of the Plaintiff/Applicant who reiterates the grounds in support of the application and has annexed a copy of the title deed, letters of administration and a confirmation of grant.

8. Further she has exhibited in the Supporting Affidavit, photographs showing temporary structures that have been erected and people ploughing the suit.

9. The Plaintiff/ Applicant further depones she has established a *prima facie* case with probability of success and is deserving of the injunctive order sought.

10. In her submissions the Applicant submits that she has established a *prima facie* with probability of success and places reliance on the decision in Giella Vs. Cassman Brown & Company Limited (1973)E.A. 358; and the case of Kenlbe Constructions Limited Vs. New Gatitu Service Station.

11. The Applicant has further relied on the decision of Mrao Limited on the definition of a *Prima Facie* Case; and submits that she will suffer irreparable loss that cannot be compensated by damages, and cites the decision in Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai (2018) eKLR on the definition of an irreparable injury.

12. Lastly, the Applicant submits that the balance of convenience tilts in her favour and prays that the injunctive orders be confirmed.

#### **RESPONDENTS CASE: -**

13. The Respondent have filed a Replying Affidavit through the 1<sup>st</sup> Defendant/ Respondent Mr. John Kibet Tallam, who describes himself as the chairman of interim leadership of the occupants of the suit land known as L.R. NO. 21959/14 North of Muhoroni Township.

14. Mr. Kibet Deposes, that the Defendant/ Respondent have been in continued occupation of the parcel of land from Pre-Independence Kenya, when it was owned by a white settler. After independence the property was taken over by ADC and that in 199 Mr. Charles Murgor claimed to have bought the property from ADC.

15. The Respondent claim that they have had exclusive possession of the property as against the Plaintiffs from 1999, and an eviction order would render their suit moot.

16. They have annexed photographs showing food crops on the property and claim that the same are their crops.

17. The Respondents depone that they have established a prima facie case for the interim orders of stay; and are ready and willing to issue an undertaking as to damages should the court fit to order.

**ANALYSIS AND DETERMINATION: -**

18. The Principles of Grant an injunction were well settled in the cases of Giella V.s Cassman Brown, Mrao Limited and the Nguruman Case.

19. The Principles are: -

- (a) First an applicant, must show a prima facie case with a probability of success.
- (b) Secondly, an interlocutory injunction will not normally be granted unless the application might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
- (c) Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.

20. In the Mrao Limited case, what constitutes a prima facie case, was defined. The court held that: **“In Civil Cases, it is a case which on the material presented to the court, a tribunal directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”**

21. It is to be noted that at the interlocutory stage, the court does not make findings and/or determination but rather inquires on the facts as presented.

22. In the Nguruman Case, the court observed: **“...We reiterate that in considering whether or not a prima facie has been established, the court does not hold a mini trial but must examine the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been threatened with violation.....”**

23. From the annexures placed before court the Plaintiff has exhibited as annexure 1(a) a certificate of Title in respect of the property, as well as Grant and Certificate of Grant confirming her as the proprietor of L.R. No. 21959/14.

24. It follows therefrom that she is the proprietor of the suit land in question and that the actions of the Defendants are that the actions of the Defendant are affecting her proprietary interests which ought to be protected. The Photographs annexure NCM2 shows temporary structures on the property. Those structures are not in a habitable state, and the contention by the Respondents that they have lived on the suit property is unconvincing.

25. The court is therefore convinced that the Plaintiff has set out a prima facie case as defined in the Mrao Limited case, and that she has passed the test of the grant of injunction as prayed for in prayer 3 of the application.

26. Accordingly, the Notice of Motion application is allowed in terms of prayer 3 and 4 of the application.

27. Costs of the application to the Plaintiff

**DATED AT KAPSABET THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2022.**

**HON. M. N. MWANYALE**

**JUDGE**

Ruling delivered in the presence of: -

**Mr. Mely for the Plaintiff/ Applicant**

**N/a for the Defendants/ Respondents**



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