



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

ELC CASE NO. 3 OF 2021

HASSAN MOHAMED NOOR.....1ST PLAINTIFF

BASHIR MOHAMED NOOR.....2ND PLAINTIFF

VERSUS

MOHAMMED ABDI KARIM.....1ST DEFENDANT

SULTANO ABBEY MUHUMED.....2ND DEFENDANT

ADAN MOHAMED ABDI.....3RD DEFENDANT

SIYAD MOHAMED ABDIKARIM.....4TH DEFENDANT

KHALIF MOHAMED KIRIM.....5TH DEFENDANT

MOHAMMED JAMA NOOR.....6TH DEFENDANT

RULING

1. **Hassan Mohammed Noor & Bashir Mohamed Noor** (*the plaintiff's herein*) instituted the suit herein vide plaint dated 25th October 2021 seeking a permanent injunction restraining the 1st, 2nd, 3rd, 4th, 5th and 6th defendants, their servants and/or agents from entering on and/or in any way interfering with the plaintiffs use and quiet enjoyment of the plaintiffs **plots No. R6152, R1653, R6154, R6158, R6254 and R6258** respectively. (*herein also referred to as the "suit premises"*).

2. The plaintiff's similarly filed application dated 25th October 2021 seeking the following Orders;

- a. Spent
- b. Spent
- c. That pending the hearing and determination of this suit the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants either by themselves, their servants, agents and otherwise be and are hereby restrained by an injunction from trespassing into the plaintiff's property
- d. That the Officer Commanding Police station Wajir Police to ensure enforcement and compliance of the Order.
- e. That costs of this application be in the cause.

3. The application was supported by the grounds on the face of the application and the supporting affidavit of **Hassan Mohammed Noor**. He averred that together with the 2nd plaintiff, they bought the suit premises from the 1st to 5th Defendants with the 6th Defendants being a witness to the agreement. They paid for the plots in full and are now the legal owners of the plots located in Wajir County. That the Defendants are now conducting the process of beaconing, subdividing and selling the said plots to unsuspecting members of the public with the assistance of the 6th Defendant being the area chief. That the defendants are hiring armed youth who come with weapons to disrupt the peace enjoyed in the suit property.

4. The application was opposed by the Respondents vide a Replying Affidavit dated 10th December 2021 sworn by Mohamed Abdi Karim. He averred that the applicants have failed to tender evidence to show that the defendants/respondents have encroached onto or trespassed into

their land. That none of the respondents have occupied or encroached the suit premises. That the respondents having sold the portions of land to the applicants, they relinquished all their interest on the land and have never attempted to settle on the suit premises.

5. The Respondents also filed a Notice of Preliminary Objection dated 8th December 2021 raising the following grounds;

a. That the suit herein has been filed in the wrong forum for the following reasons;

(i) The Wajir Law Court has the requisite and competent jurisdiction to try this matter in line with section 11 of the Civil Procedure Act because from the disclosed valuation of the land in the plaintiff's pleadings, the suit land does not exceed the magistrate's court pecuniary jurisdiction as per Section 7 of the magistrate's Court Act.

(ii) The parties to the suit reside within Wajir Township and therefore the territorial jurisdiction is vested with the Wajir Magistrate's Court to hear and determine the suit.

6. On 14/12/2021 the Court, by consent of the parties directed that the application be canvassed by way of written submissions. at the time of writing this judgement, none of the parties have filed their submissions.

Analysis and Determination

7. I have considered the affidavit evidence and notice of preliminary objection as well as the applicable law. The issue raised in the preliminary objection is Whether or not this Honourable court has jurisdiction to entertain this suit.

8. In the case of **Mukhisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd, [1969] EA 696**, the Court held as follows:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of the judicial discretion. The improper raising of points of fact by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

9. Again in the case of **Owners of Motor Vessel “Lillians” vs Caltex Oil Kenya Ltd (1989) KLR I Justice Nyarangi JA** held;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it, the moment it held the opinion that it is without jurisdiction.”

10. **Article 162 (2) (b)**, as read with **Articles 165 (5) (b) of the Constitution, 2010**, and **Section 13 of Environment and Land Court Act No. 19 of 2011** confers this court unlimited original and appellate jurisdiction in disputes relating to **“the environment and the use and occupation of, and title to land.”** **Section 12 to 15 of the Civil Procedure Act, Chapter 21 of Laws of Kenya**, gives the person suing the option of approaching the nearest Court with Jurisdiction to the place the cause of action occurred, immovable property is situated, or where the person sued actually and voluntarily resides or carries on business, or personally works for gain.

11. The subject matter of this suit are Town plots situate within Wajir Township where the defendants are also said to reside. The plaintiffs have however opted to file the suit at the Environment and Land Court, Garris instead of PMCC at Wajir.

12. There is no Valuation report by the plaintiffs showing that the suit properties combined exceed the pecuniary limit of the magistrate's court at Wajir.

13. Equally, there is no valuation report by the defendants that the estimated value of the suit properties does not exceed the pecuniary limit of the magistrate's court at Wajir. Unless that issue is fully determined, this court cannot say whether or not it is seized with jurisdiction to hear and determine the suit herein. The orders which comment in this matter is that the Notice of Preliminary objection dated 8th December, 2021 is not upheld and the same is hereby dismissed with costs. It is so Ordered.

READ, DELIVERED AND SIGNED VIRTUALLY AT GARISSA THIS 25TH FEBRUARY, 2022

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HON. E.C. CHERONO

ELC JUDGE

IN THE PRESENCE OF:

1. APPLICANT/ADVOCATE: ABSENT

2. RESPONDENT/ADVOCATE; ABSENT

3. IJABO: COURT ASSISTANT