



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC. NO. 98 OF 2013**

**GULAM RASUL MIRDAT ..... 1ST PLAINTIFF**

**YUSUF MUSA HAJI ..... 2ND PLAINTIFF**

**NASSOR MOHAMED NAHDY ..... 3RD PLAINTIFF**

**- V E R S U S -**

**BAHRMA ABDALLA ABDULRAHMAN MIRAN .....1ST DEFENDANT**

**MOHAMED ADAM ABDULRAHIM .....2ND DEFENDANT**

**THE LAND REGISTRAR, MOMBASA .....3RD DEFENDANT**

**RULING**

[1] The applicants filed a notice of motion dated 16th May, 2013. They ask for an interim injunction to restrain the 1st and 2nd defendants, by themselves their workmen, authorized agents and servants from carrying out eviction and or alienating or in any other way interfering with the quiet possession of the members of Shibu Mosque in respect of Title No. Mombasa/Block XVI/166 pending the hearing of this application. The applicants also ask the court to direct that this suit be continued in the names of the plaintiffs as representing Abdulrehman Bin Miran Wakf dated 30th March, 1972.

[2] The second defendant herein swore an affidavit dated 21st June, 2013. He averred that he is the grandson of the late Abdulrahman Miran. He is also an administrator of his Will. He annexed a copy of the grant. He deponed that they have taken possession of the property known as MSA/BLOCK/XVI/166. He denied that there was a Wakf as alleged by the applicants. He stated that his grandfather had built the Baluchi Mosque and that any bequest in a Wakf should have been made to that mosque. The 1st defendant denied that there is a Wakf. He produced a letter from the Wakf Commission of Kenya saying the alleged Wakf is not known to Wakf Commissioner of Kenya in Mombasa.

[3] I have read the submissions of both counsel in this matter. I have also considered their submissions in court before me. I have come to a considered opinion that the threshold of *Geille v Cassman Brown 1979 EA* has not been met.

I disallow the application with no order as to costs. The parties are well advised to take an early date for hearing the suit.

**Dated and delivered in open Court at Mombasa this 18th day of September, 2014.**

**S. MUKUNYA**

**JUDGE**

**18.9.2014**

In the presence of:

Mr. Oloo advocate for Khatib advocate for the defendant

Mr. Wangalwa advocate for Apollo Muinde Advocate