



Alio & 31 others ((Suing on behalf of the Residents of Kamor Location, Mandera East Constituency, of Mandera County)) v Juma & 8 others (Environment and Land Case Civil Suit E004 of 2022) [2022] KEELC 12679 (KLR) (30 September 2022) (Ruling)

Neutral citation: [2022] KEELC 12679 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT AND LAND CASE CIVIL SUIT E004 OF 2022
EC CHERONO, J
SEPTEMBER 30, 2022

BETWEEN

MOHAMMED IBRAHIM ALIO & 31 OTHERS PLAINTIFF
(SUING ON BEHALF OF THE RESIDENTS OF KAMOR LOCATION,
MANDERA EAST CONSTITUENCY, OF MANDERA COUNTY)

AND

AHMED JUMA 1ST DEFENDANT
ADAN ISMAIL KERROW 2ND DEFENDANT
HASSAN SHEIKH ABDIRAHMAN 3RD DEFENDANT
MOHAMMED ABUBAKAR HAJI 4TH DEFENDANT
HUSSEIN MAALIM DIKA 5TH DEFENDANT
MANDERA COUNTY GOVERNMENT 6TH DEFENDANT
CHIEF LAND REGISTRAR 7TH DEFENDANT
ATTORNEY GENERAL 8TH DEFENDANT
NATIONAL LAND COMMISSION 9TH DEFENDANT

RULING

1. The plaintiffs'/applicants' *vide* their notice of motion dated June 16, 2022 herein aver that they are nomadic pastoralists who have since time immemorial been the legitimate owners and occupants of Kamor location which land is situate in Mandera county in the Republic of Kenya (the suit property). That the land comprising the suit property is used by the plaintiffs as their ancestral land for seasonal cyclic use for their livelihoods, cultural, ceremonial and spiritual purposes.



2. That their interest in the suit premises (among other interests) are ancestral and cultural dating back 27 years. That their interest is anchored under the provisions of articles 40,43,63,69 and 71 of the Constitution of Kenya 2010. That they have not ceded their rights or interests to a third party under any agreement whatsoever. That they are deserving of protection under the Banjul Charter, ICCPR, ICESR, ILO Convention 169 on the Indigenous and Tribal People, IFC performance standards (standard 1 as read together with standard 7 on indigenous people.)
3. The plaintiffs *vide* the said notice of motion dated June 16, 2022 now contend that the 6th respondent through its land officers, some members of county assembly (MCA), the area chief and some other elders including the 1st – 5th defendants are now colluding to illegally, un procedurally and fraudulently allocate themselves plots emanating from the Kamor community land of Kamor location with intent to defraud and disinherit them. They urge the court to issue the following prayers;
 - a. Spent
 - b. Spent.
 - c. That this honourable court be pleased to grant an order of temporary injunction restraining the respondents, their agents/servants, employees and/or anyone acting on their behalf or under their instructions from evicting, harassing, intimidating, arresting, selling, disposing of, allocating, transferring and or in any manner interfering or dealing with the plaintiff's/ applicant's peaceful occupation, use and enjoyment of the community land situate in Kamor location, Mandera county in the Republic of Kenya (the suit property) pending the hearing and determination of the suit herein.
 - d. That the OCS Mandera police station to ensure compliance with orders herein.
 - e. That the costs of the application be provided for.
4. The application is supported by the affidavit sworn by Mohamud Ibrahim Alio (the 1st plaintiff/ applicant). He restated the averments made in the plaint and further deponed that the applicants made an application to the 6th respondent's director of lands, survey and physical planning for surveying of the Kamor community land and allocation of the plots to them who have been occupying the said land.
5. That indeed the county land survey visited the communal land and a survey was conducted having established that there exists no dispute on ownership of the said land. That despite the land being surveyed, the 6th to 9th respondents have failed and/or refused to allocate the plots to the applicants and the residents of Kamor location.
6. That in a bid to secure the land, the applicants lodged a complaint with the county commissioner Mandera county on August 18, 2021 desperately asking for help and intervention but this cry fell on deaf ears. That it has also come to their knowledge that the 6th respondents through its land officers, some leaders like members of the county assembly (MCA), the area chief and some elders including the 1st to 5th defendant are clandestinely colluding to illegally, un-procedurally and fraudulently allocate themselves plots emanating from the suit property. That the 6th respondent is now using its law enforcement officers and the administration police to harass, intimidate and arrest the applicants and their families.
7. Despite service of the application being effected upon the respondents, they did not file a reply to the same. The application was set down for hearing on August 2, 2022 when the applicant argued the application orally.



Analysis And Determination

8. I have considered the application and the oral arguments made by the applicants. I find that the same raises the following issues for determination; Whether the applicants are entitled to temporary injunction sought?

9. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No 77 of 2012 (2014) eKLR the Court of Appeal reiterated the principles set out in *Giella v Cassman Brown* (1973) EA 358 when it 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 rests 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”

10. On the first level the applicants herein have deponed that they have resided in the suit premises for over 27 years. The aforesaid land is both community and ancestral land which they use for seasonal cyclic use for their livelihoods, cultural, ceremonial and spiritual purposes. They have attached demand notices to the county commissioner and reports made to the police on the allegation of harassment.

11. The county government is the custodian of community land for the benefit of the community. Section 6 of the *Community Land Act* provides its role as follows;

Role of county governments

- (1)) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.
- (2) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.
- (3) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.
- (4) Any such monies shall be deposited in a special interest earning account by the county government.
- (5) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.
- (6) Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.
- (7) Upon the registration of any unregistered community land in accordance with this Act, the respective registered community shall, assume the management and administrative functions provided in this Act and the trustee role of the respective county government in relation to the land shall cease.



- (8) A county government shall not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held. [emphasis mine]
12. From the provisions of section 6 of the Community Land Act, it is clear that the county government is a custodian of community land for the benefit of community members for which it is held. The county government has no right to dispose of/sell the land. The applicants have raised allegation of intent by the respondents to dispose/sell the land. This will deprive the applicants from the land they now occupy. Their right under article 40 of the Constitution will be curtailed. I therefore find that the applicants have raised a *prima facie* case.
13. As to whether the applicants shall suffer irreparable harm. The applicants have made allegations of harassment and disposition of land which they currently occupy and utilize. The respondent have not controverted this claim. There is need to protect their rights pending the hearing and determination of the suit. The balance of convenience therefore tilts in favour of the applicants.
14. In the end, I do find and hold that the applicants have proved their case to warrant the prayer for temporary injunction. The application therefore succeeds in the following terms;
- a. A temporary injunction be and is hereby issued restraining the respondents, their agents/ servants, employees and/or anyone acting on their behalf or under their instructions from evicting, harassing, intimidating, arresting, selling, disposing of, allocating, transferring and or in any manner interfering or dealing with the plaintiff's/applicant's peaceful occupation, use and enjoyment of the community land situate in Kamor location, Mandera county in the Republic of Kenya (the suit property) pending the hearing and determination of the suit herein.
 - b. The OCS Mandera police station to ensure compliance with the orders herein.
 - c. Costs of the application shall be in the cause.

READ, SIGNED AND DELIVERED VIRTUALLY THIS 30TH SEPTEMBER, 2022

HON. E.C CHERONO

ELC JUDGE

In the presence of;

- 1. Mr. Kiilu for the Defendant**
- 2. Applicants/Advocate: Absent**
- 3. Fardowsa: Court Assistant**

