

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI(NAIROBI LAW COURTS)

CIVIL SUIT NO. 202 of 2004

NADHIF JAMA ADAN PLAINTIFF

VERSUS

SHARIFF ABDI HASSAN DEFENDANT

RULING

On the 21st July, 2004 the Chamber Summons of the 2nd March, 2004 filed by the Applicant herein came before Mr. Justice Lenaola for hearing when the following consent order was recorded.

(3) THAT a temporary injunction do issue restraining the Defendant by himself, his agents, servants or employees from entering upon, wasting, digging on, excavating, fencing and erecting upon, wasting digging on, excavating, fencing and erecting any structure and whatsoever from interfering and disrupting the Plaintiff, his agents or servants from enjoying possession of the property title. Garissai/Township/105, which order, be enforced by the Officer Commanding Garissa Police Station.

(4) THAT a temporary injunction do issue compelling the demolition of any illegal structure unlawfully built by the Defendant, his servants or agents on the suit premises property title. Garissai/Township/105, which order, be enforced by the Officer Commanding Garissa Police Station pending the hearing and determination of this application.

(5) THAT this Honourable court do issue an order compelling the Defendant his agents, servants to vacate the suit premises title. Garissai/Township/105 forthwith. Pursuant to that order a letter dated the 22nd September, 2004 was sent to the Registrar of the High Court enclosing a copy of a letter dated the 15th September, 2004 from the Provincial Surveyor North Easter Province.

This report shows that Garissa/Block/105 and Garissa/Block/140 are separate plots some half a kilometer away from each other. Block 105 is opposite Garissa Primary School has a two storey building on it and temporary structures made of iron sheet, which are used as kioks. So far as plot GSA/792 is concerned this could not be traced in the Registry Index Map.

Mr. Wachira for the Defendant submitted that the report was inadequate and did not give the history of the plots. Further there was nothing to show the structures are illegal, and that the order sought amounted to an eviction order; In order to succeed the Applicant must show that he has a prima facie case with a probability of success and that damages would not be an adequate remedy. When someone has trespassed on to others land except in exceptional circumstances a court will not permit such trespass. In this case the applicant has produced evidence that he is the owner of plot Garissa/Block/105. What the Respondent relies on are letters showing he was allocated a plot referred to as GSA/792. The Letter of Allotment issued to him on the 6th January, 1993 is not specific and refers to a plot called B.C.R. Plot Garissa Town. The Respondent is the registered proprietor of Plot No. Garissa/Township/40. I am of the view that the surveyor's report conforms to the terms of the court order.

From this it is obvious that plots 105 and 40 are separate and distinct. The assumption by the Respondent that plot 105 must be another property elsewhere and not plot GRA/792 is clearly not true. The Applicant has established that prima facie he is the owner of the plot 105 and that the metal sheet erections on it are not his. The Applicant has therefore established a prima facie case with a probability of success and in my view damages would not be an adequate remedy. In the result I make the order asked for on the Chamber Summons of the 2nd March, 2004 with costs to the Applicant. The Plaintiff to file in court an undertaking

as to damages

Dated and delivered at Nairobi this 19th day of May,2005

P.J. R ANSLEY

JUDGE