



Hassan v Registrar of Lands, Lamu County & 11 others (Environment & Land Case 7 of 2023) [2023] KEELC 18575 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18575 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 7 OF 2023**

EK MAKORI, J

JULY 5, 2023

BETWEEN

KASSIM ATHMAN HASSAN APPLICANT

AND

REGISTRAR OF LANDS, LAMU COUNTY 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

HALKAN MOHAMED 3RD RESPONDENT

KAMARI MOHAMED ALI 4TH RESPONDENT

AMINA S MOHAMED 5TH RESPONDENT

SAMIA AHMED MOHAMED 6TH RESPONDENT

ABDI WEBI ALI 7TH RESPONDENT

JUSTUM MBOYA LAWA 8TH RESPONDENT

JOHN KARIUKI 9TH RESPONDENT

NELSON KIMEU NGUTU 10TH RESPONDENT

HALIMA KALAMA CHARO 11TH RESPONDENT

MOHAMED BUTE 12TH RESPONDENT

RULING

1. Application dated 14th November, 2022 seeks among other relief(s) :
 - a) Temporary injunction do issue restraining Defendants whether by their agents, employees, servants, or any other persons working under the Defendants' instructions and authority



from entering, trespassing, occupying, fencing, locking, or any other way interfering with the Plaintiff's quiet possession or at all dealing with the Plaintiff/Applicant's property known as plot No Mokowe/511 situated at Mokowe Town within Lamu County pending the hearing and determination of this suit.

- (b) Costs be provided.
2. The application is opposed. There is a replying affidavit deposed by one Mohammed Bute on his behalf and that of the 3rd to 11th Defendants/Respondents.
 3. The Applicant averred that he is the proprietor of a parcel of land known as Plot No Mokowe/511, which allegedly lies on the corner of the main Hindi-Mokowe Road and the Road to the County Government offices. He has had the same having inherited it from his forefathers. He alleges that the 1st Defendant without colour of right illegally encroached on it and excised a portion that was subdivided and allotted to the 3rd -12th Defendants. The Applicant claims that the 3rd to 12th Respondents who are allegedly attempting to take possession of the suit property are total strangers to him and his family and have no right to the property hence the current application.
 4. In a rejoinder, the Respondents contended that they are registered owners of parcels of land known as Plot No Lamu/Mokowe New Township/1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, and 1189 respectively at Mokowe within Lamu County. The titles were issued to them on 6th September 2022. They claim to have been in actual occupation of the suit properties before the filing of this suit and as Survey and other land allocation and resettlement procedures were undertaken, they were on the ground. They have carried our development on their respective portions, including farming and construction. They do not know the parcel of land known as Plot No Mokowe/511.
 5. At this stage what to determine is whether an injunction should issue as held in *Giella v Casman Brown & Company Limited* [997] E.A. 358. Whether there is a prima facie case with a probability of success. Whether if an interlocutory injunction is not issued at this stage, the applicant will suffer irreparable injury, which would not adequately be compensated by an award of damages. And if in doubt- the balance of convenience.
 6. At this point, the parties provided the requirements to be met before the issuance of an injunction and cited numerous other authorities that mirrored the *Giella case*.
 7. Having reviewed the materials placed before me, I reckon that both the Applicant and the Respondents each claim ownership of the parcels they allegedly possess. Applicant's land parcel Plot No Mokowe/115 situated at Mokowe Town within Lamu County. The Respondents on the other hand stated that Plots New Mokowe No 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, and 1189 respectively are in their possession, and situated in New Mokowe and that they have been living on the same until they were given titles on 6th of June 2022. They have no clue about the Applicant's land.
 8. No evidence was presented by any of the parties in this suit from the Lands Registry in Lamu to demonstrate whether the parcels owned by the Respondents were split off from Plot No Mokowe/511. The Lamu County Government's Resettlement Program is what I can see from the records. Since I do not have any supporting documentation, it is unclear how it was done or whether it altered the Applicant's plot.
 9. Consequently, I will not split my hair at this time on how the ground looks like. I will in the spirit of Active Case Management, direct at this stage that the Land Registrar and Surveyor Lamu County provide a report on the status of Land Parcel No Mukowe/511 and the status of Land Parcels Nos



Lamu/Mukowe New Township 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, and 1189. That the Report takes into account the Resettlement Program by the County Government of Lamu and the impact it had, if any on the aforementioned properties.

10. The exercise is to be carried out within 60 days hereof and the same be filed before this court for further directions. This will be in line with the Judiciary's multi-door approach to Dispute Resolutions which includes the provision of an Alternative Dispute Resolution Mechanism under article 159 (2)(c) of the Constitution.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 5TH DAY OF JULY 2023

E.K. MAKORI

JUDGE

In the presence of :

Ms. Oloo holding brief for Mr. Kilonzo for 3rd to 12th Defendants

Court Clerk: Happy

In the Absence of;-

Kedeki & Companies Advocate

