



**Mohame v Abdi & another (Environment & Land Case 33 of 2023)
[2023] KEELC 21213 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21213 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 33 OF 2023
EK MAKORI, J
NOVEMBER 2, 2023**

BETWEEN

DIRE OLOW MOHAME PLAINTIFF

AND

ABDILE HASSAN DUALE 1ST DEFENDANT

BARE MUHAMED ABDI 2ND DEFENDANT

RULING

1. Chakama Ranching Company Limited (not a party in this suit) is said to own vast land that it leases out to pastoralists. In this case, it is said to have leased over 50,000/- acres of its land comprised in land title No. 17503 Land Reference 13472/1 to the applicant.
2. Meanwhile, the respondents herein are said to have trespassed onto the said land and forcibly took possession of the same. The respondents contended that the land is community land for breeding cattle. They also agreed with some “Wagiryama” for grazing areas within Chakama for 12 months commencement 18th April 2023 to 18th April 2024.
3. From the materials I have it seems this ranch (Chakama Ranching) has disputes pitting it with the local community. The respondents have referred this court to the case of *Tairen Association of Mijikenda & Chakama Ranching Company Limited and 7 Others, National Land Commission & 2 Others (Interested Parties)* (2022) eKLR pending before this court - Odeny J.
4. The applicants approached this court vide application dated 17th May 2023 seeking orders that:
 - i. Spent



- ii. Spent (the application was certified not urgent on grounds that it sought mandatory orders ex parte. See the proceedings by this court dated 18th May 2023.
 - iii. That this court be pleased to grant a temporary injunction for 14 days restraining the Defendants/Respondents by themselves, their servants, agents, heirs, employees, and all claiming through them from trespassing/dealing/interfering/undertaking grazing their livestock on the leased property from Chakama Ranching Company Limited Plot No. 17503, Land Reference 13472/1 measuring 50,000 acres, pending the hearing and determination of this suit.
 - iv. That the Respondent be condemned to pay the costs of this application.
5. The only issue that stands for the determination of this suit is whether this court at this stage can issue temporary injunctive orders.
 6. The Applicant submitted that the test as laid in *Giella v Cassman Brown & Company Limited* [1973] E.A. 360 has been achieved. The applicants state, that the respondents admit they leased the land in question from trespassers.
 7. The Respondent on the other hand contended that the land in question has been all along used by the community for purposes of breeding and this has been recognized in a ruling delivered by this court in the case of *Tairen Association of Mijikenda vs Chakama Ranching Company Limited & 7 Others, National Land Commission (Interested Parties)* [2022] eKLR – Odeny J.
 8. The respondents also averred that the current suit and application are misguided and without evidence.
 9. I have considered the materials and submissions placed before me The threshold to achieve before the grant of an injunction is as held in the Giella Case:

“The applicant should satisfy the Court that he has a prima facie case with a probability of success. Secondly, he stands to suffer irreparable loss or injury which cannot be compensated by damages and thirdly, if the Court is in doubt, it should decide on a balance of convenience.”
 10. The first issue to determine then is whether the applicant has proved a prima facie case with the probability of success as held in *Mrao v First American Bank Of Kenya & 2 others* [2003] KLR 125 as follows:

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case’. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”
 11. The principles stated in the Giella case are to be addressed sequentially as held in *Kenya Commercial Finance Company Ltd v Afraba Education Society* [2001] 1 EA 86 as cited in *Karen Bypass Estate Ltd v Print Avenue and Company Ltd* [2014] eKLR:

“so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed”.



12. After considering the materials placed before me, I have concluded that the current application has not achieved the Giella test to warrant the issuance of a temporary injunction. The reason I have reached that conclusion is that the applicant approached this court seeking:

“ 14 days temporary injunction”

The application was filed on the 18th of May 2023. 14 days lapsed on the 21st day of May 2023. Even if I were to grant those orders, the application has already been spent.

13. On the merits of the application, the applicant claims to have leased 50,000 acres from Chakama Ranch Limited. The land in question seems to have disputes pending before this court pitting it with the Local Community. The Respondent also seems to have leased the land from inhabitants (the “Giryamas” on the ground). This warring interest will require a full deliberation and decision of this court to avoid proliferation and convolution of the matter.
14. Before I pen down I will state that pleadings normally are the gateway to accessing the Court. When well and diligently drafted they give a party longevity in sustaining a suit before a court of law. The pleadings by the applicants and the supporting documents are scanty and need to be re-looked at to avoid parties losing a matter due to poor draftsmanship. Counsel for the applicants should take note.
15. To me the Giella test has not been achieved in this matter. The application dated 17th May 2023 is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 2ND DAY OF NOVEMBER, 2023.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Kiponda for the 1st Defendant

Court Clerk: Happy

In the absence of:

Mr. Mandi for the applicants

