



**Chairman Garissa Juakali Association v Secretary, County Government of Garissa & another  
(Constitutional Petition E009 of 2024) [2024] KEHC 5625 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5625 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CONSTITUTIONAL PETITION E009 OF 2024**

**JN ONYIEGO, J**

**MAY 23, 2024**

**IN THE MATTER OF ARTICLES 10(2)(A) AND (C) 22(1) AND  
(2), 55(B) AND 259(1)(A) AND (C) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THREATENED CONTRAVENTION OF  
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10(2)(A)  
22(1), 27(1) AND (2), 55(B) AND 259 (1)(A)(B)(C) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**AND**

**IN THE MATTER OF THE BILL OF RIGHTS UNDER CAP FOUR OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT OF GARISSA  
IN THE MATTER OF COUNTY GOVERNMENT ACT NO. 17 OF 2012**

**BETWEEN**

**CHAIRMAN GARISSA JUAKALI ASSOCIATION ..... PETITIONER**

**AND**

**SECRETARY, COUNTY GOVERNMENT OF GARISSA ..... 1<sup>ST</sup> RESPONDENT**

**SUB COUNTY ADMINISTRATOR, GARISSA TOWNSHIP . 2<sup>ND</sup> RESPONDENT**



## RULING

1. The petitioner instituted this suit by way of petition dated 02.04.2024 filed together with a notice of motion of even date seeking orders that:
  - i. Spent
  - ii. This Honourable Court be pleased to grant a temporary injunction to stop the respondents from ordering locally manufactured goods such as wheelbarrows, rakes and spades outside Garissa County.
  - iii. That costs of this application be borne by the respondents.
2. The notice of motion was supported with the annexed affidavit of Osman Mohamed Barkhadale sworn on 02.04.2024 on his behalf and that of Jua Kali Association of Garissa.
3. That the respondents have continually offered contracts to people outside Garissa County to supply goods such as wheelbarrows, rakes and spades yet the same are readily available and can easily be supplied by the locals and more so the applicants. That on several occasions, they have addressed the respondents on the same but in vain. That these are goods that can be locally manufactured so as to create employment to the youths in the county in aiming the sharing of devolution power and resources instead of getting the same outside the county.
4. That the youths in Garissa County are likely to be rendered jobless because what they are able to do is taken away from them. It was urged that the respondents have curtailed the Vocational Training Students right to career progression. Additionally, that given that these students have placements in this sector, taking such work outside the county is thus not only unfair but also inhuman.
5. The background of the matter herein is that the Garissa Jua Kali Association is a dully registered organization under the *Societies Act*. That its objectives are to promote value addition for their products, easier accessibility, marketing products and expanding knowledge through interacting with traders and creating an income through trading. That the respondents have continually offered contracts to persons outside Garissa county to supply wheelbarrows and spades yet locals are available and ready to provide such services. This court was therefore urged to issue the orders sought.
6. Despite the directions by the court that the respondents file their response and further, the application be canvassed by way of written submissions, the respondents failed to respond to the application and further, no submissions were filed by either party.
7. It therefore follows that the application herein is unopposed. But the foregoing notwithstanding, the suit must be determined on its own merits. [See *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR where the supreme court held that a suit does not automatically succeed simply because it is not opposed.
8. I have considered the application herein and applicant's counsel's oral submissions. In my considered vie, the only issue for determination is whether the applicant has met the requirements for grant of temporary injunction.



9. The guiding principles for grant of orders of temporary injunction are well settled. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* CA No.77 of 2012 (2014) eKLR the Court of Appeal held that;

“in an interlocutory injunction application, the Applicant has to satisfy the triple requirements to;

- a. establishe his case only at a prima facie level,
- b. demonstrate irreparable injury if a temporary injunction is not granted, and
- c. allay 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 stages are to be applied as separate distinct and logical hurdles which the applicant is expected to surmount sequentially”.

10. Consequently, the applicant ought to first establish a prima facie case. Similarly, in the case of *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR the court gave a determination on a prima facie case as follows:

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

11. In the instant case, the main contention by the applicant is pegged on the fact that despite engaging the respondents to allow them supply the goods in question, the same have fallen in deaf ears. My understanding of the suit herein is to the effect that the applicant seeks before this court an order to direct the respondents on whom to trade with and further direct that the respondents acquire the said goods solely from the applicant. The reason for the same is that the youths in Garissa County are likely to be rendered jobless because what they are able to do is taken away from them.
12. Additionally, that the respondents have curtailed the Vocational Training Students the right to career progression. In my considered view, the order desired by the applicant is tantamount to gagging the respondents. I say so for the reason that it is not within this court’s duty to determine the kind of businesses the respondents engage in and by whom. In commercial law, the same provides for willing seller and willing buyer in matters of settling contracts. It therefore follows that ordering the respondents to trade solely with the applicant in regards to the goods mentioned herein would be akin to curtailing their rights of free trade.
13. I am therefore not satisfied that the applicant has established a prima facie case to warrant the granting of the orders of injunction. [ See the case of *Showind Industries v Guardian Bank Limited & Another* (2002) 1 EA 284]. In any event, there was no proof of any contract for the supply of the items in question from outside Garissa County having been awarded to the so call outsiders.
14. As to whether they are likely to suffer irreparable damage that cannot be compensated in monetary terms, none was demonstrated. It was incumbent upon the applicants to demonstrate the specific damage they are likely to suffer that can not compensated in monetary terms.



15. As to whether the scales of justice tilts in favour of the applicants, none was established. To the contrary, the scales of justice does tilt in favour of the respondents even when there is no response.
16. In my view, the prayers sought cannot issue at the interlocutory stage. The same can await the hearing of the main petition before substantive orders can be made. I hold the view that a temporary injunction cannot issue in the circumstances herein. Accordingly, the application is dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>TH</sup> DAY OF MAY 2024**

**J. N. ONYIEGO**

**JUDGE**

