



REPUBLIC OF KENYA



Giriama Ranching Company Limited v Thethe & 5 others (Civil Case E006 of 2024) [2024] KEHC 9356 (KLR) (2 August 2024) (Ruling)

Neutral citation: [2024] KEHC 9356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE E006 OF 2024
SM GITHINJI, J
AUGUST 2, 2024**

BETWEEN

GIRIAMA RANCHING COMPANY LIMITED PLAINTIFF

AND

STEPHEN GARAMA THETHE 1ST DEFENDANT

GEORGE KAINGU MASHA 2ND DEFENDANT

JOSEPH CHANGAWA MWACHANZE 3RD DEFENDANT

ALI MENZA SHIKARI 4TH DEFENDANT

MICHAEL KOMBE HARE 5TH DEFENDANT

FRANCIS KAZUNGU CHARO 6TH DEFENDANT

RULING

1. On 26/3/2024, the Applicant filed a Plaint seeking judgment be entered against the Respondents for *inter alia* a permanent injunction restraining the latter from calling for meetings of the Applicant company or purporting to perform any duties on behalf of the Applicant and a declaration that a meeting held on 5/12/2023 where the 2nd to 6th Respondents were appointed as officials of the Applicant were null and void.
2. Alongside the Plaint was a notice of motion application dated 12/6/2024 made under section 1A, 1B, 3A and 63 (e) of the [Civil Procedure Act](#), Order 40 rules 1 & 2 and Order 51 rule 1 of [Civil Procedure Rules](#), for orders: -
 1. Spent.
 2. Spent.



3. That this honourable court be pleased to issue temporary injunction restraining the Defendants/respondents herein and/or their agents and/or employees and/or servants and/or relatives or any other person (s) acting on the Defendants'/respondents' behalf from interfering with the affairs of the Plaintiff's/applicant's company. Either by directly and/or indirectly calling for meetings of the company and/or purporting to perform any duty or function on behalf of the company and/or dealing with the Plaintiff's/applicant's properties, including a parcel of land known as Plot LR No. 12785, CR No. 19142 situate at North East of Kilifi town in Kilifi County or dealing with the Plaintiff's/applicant's company in any manner whatsoever detrimental to the rights and interest of the Plaintiff/applicant herein, pending the hearing and determination of the suit.
4. That costs of this application be borne by the Defendants/respondents in any event.
3. In support of the application are the grounds set out at the foot of the motion and those in a supporting affidavit sworn by Rajab Menza Shikari on 12/6/2024. In the said affidavit, the deponent stated that he is the chairman of the board of directors of the Applicant company. He deposed that despite denying being directors/shareholders/members of the Applicant company, the 2nd to 6th Respondents authored a letter dated 8/12/2023 through the 2nd Respondent purporting to be the chairman of the Applicant's board of directors, seeking to evict a tenant from the Applicant's parcel of land identified as Plot No. 12785, CR No. 19142. In addition to that, the 2nd Respondent filed a trespass complaint to the deputy county commissioner vide a letter dated 16/12/2023. That on 1/6/2024, the 2nd to 6th Respondents further entered into a lease agreement on behalf of the Applicant Company with a third party, over the said parcel of land. The deponent stated that as a result, the Respondents have been a threat to the directors and shareholders of the Applicant company, and that the Applicant will suffer irreparable loss and damage if the orders sought are not granted.
4. The Respondents did not file any response to the application. Similarly, no submissions were filed by either party.
5. The sole issue for determination is whether the application is merited.

Analysis and Determination

6. Order 40 Rule 1 under which the application is brought provides as follows: -
 - “Where in any suit it is proved by affidavit or otherwise –
 - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree; or
 - b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.
7. The principles for grant of injunction as stated in *Giella =versus= Cassman Brown* (1973) EA 358 are that: -



- i. an applicant must show a prima facie case with a probability of success.
 - ii. an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
 - iii. If the court is in doubt, it will decide an application on the balance of convenience.
8. The question that follows therefore is whether the Applicant has made out a prima facie case. On what amounts to a *prima facie* case was defined by the Court of Appeal in Moses C. Mubia Njoroge & 2 others =versus= Jane W Lesaloi and 5 others, [2014] eKLR citing with approval the case of Mrao Ltd =versus= Ltd vs First American Bank of Kenya and 2 others where it was defined as follows:
- “A *Prima facie* case in a civil application includes but 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 there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.”
9. The Applicant’s case is that the Respondents have had a tendency of interfering with the management of Giriama Ranching Company Limited to which they are neither directors, shareholders or even members. The respondent did not file a response to the application. The application is unopposed. The grounds in support of the application and the filed supporting affidavit establishes a prima facie case with a probability of success.
10. It’s also vivid that unless the sought for orders are granted the applicant stands to suffer irreparable injury which would not adequately be compensated by an award of damages.
11. Given the foregoing considerations I do find the application merited. Accordingly, I do issue a temporary order of injunction restraining the Defendants/Respondents herein and/or their agents, and/or employees and/or servants and/or relatives or any other person (s) acting on the Defendants’/ Respondents’ behalf from interfering with the affairs of the Plaintiffs/Applicant’s Company; Either by directly or indirectly calling for meetings of the company and/or purporting to perform any duty or function on behalf of the company and/or dealing with the Plaintiff/s/Applicant’s properties, including a parcel of land known as Plot LR No.12785, CR No.19142 situate at North East of Kilifi town in Kilifi County or dealing with the Plaintiff/s/Applicant’s company in any manner whatsoever detrimental to the rights and interests of the Plaintiff/Applicant herein, pending the hearing and determination of the suit.
12. Costs be in the cause.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 2ND DAY OF AUGUST, 2024.

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S.M. GITHINJI

JUDGE

In the Absence of; -

Mr Kenga for the Plaintiff

Mr Kiseu for the 1st Defendant

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S.M. GITHINJI

JUDGE

2/8/2024

