



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**ELC CASE NO. 198 OF 2018**

1. TOASH GEORGE AMUMA
2. ELIZABETH HARUFA JILLO
3. HEREMINE MAWATA AMUMA
4. JOSEPH MOROA ABIO
5. NICKSON MWAMBURI MUGHONGO
6. JERMIAH IGWO NEBERT
7. FRANCIS GALANA ABIO
8. EMANUEL SALUA MARO.....PLAINTIFFS

(Suing for and on behalf of 2500 RESIDENTS OF GARSEN TOWNSHIP

VERSUS

1. HAGANDA PRIVATE RANCHING COMPANY LTD
2. THE CHIEF LAND REGISTRAR
3. THE CABINET SECRETARY LANDS AND PHYSICAL PLANNING
4. THE HON. ATTORNEY GENERAL.....RESPONDENTS

**RULING**

1. I have before me for determination a Notice of Motion application dated 22<sup>nd</sup> October 2018. By the said Motion, the Eight(8) named Plaintiffs herein said to be suing on their own behalf and on behalf of 2500 residents of Garsen Township pray for orders:-

*3. That pending the hearing and determination of the main suit, this Honourable Court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent either by themselves, their servants, agents or any other person acting under their authority from evicting, dispossessing, or in any way interfering with the cultivation, farming, grazing, use and possession of the suit property by the Plaintiffs and the 2500 residents of Garsen in Tana River County represented in this suit;*

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*5. That pending the hearing of the main suit, this Honourable Court be pleased to issue an order directing the 5<sup>th</sup> and 6<sup>th</sup> Defendants to supply to the Plaintiffs and to this Honourable Court certified copies of;*

*a) Parcel folders of R No. 13599;*

- b) A certified copy of the Letter of Allotment of LR No. 13599 in favour of the 1<sup>st</sup> Defendant;**
- c) The Application for Lease of LR No. 13599 and all supporting documents;**
- d) A copy of Gazette or Notice of Sale by Auction of the Lease of LR No. 13599 if any; and**
- e) All records in their possession in relation to the Lease of LR No. 13599.**

**5. That the costs of this application be provided for.**

2. The application which is supported by an affidavit sworn by Toash George Amuma (the 1<sup>st</sup> Plaintiff/Applicant) is premised inter alia on the grounds that:-

**a) The Plaintiffs and the 2500 residents of Garsen represented in this suit have been living and using LR No. 13599 (the suit property) for decades and have built homes, buried their loved ones and used a large portion thereof for farming and grazing openly, peacefully and continuously without interruption for more than five decades;**

**b) Recently, the 1<sup>st</sup> Defendant's officers visited the suit property in the company of Police Officers who arrested several residents and charged them with alleged offences of trespass before the Garsen Law Courts;**

**c) The Plaintiffs are aware that the 1<sup>st</sup> Defendant has never had a title deed for the suit property and was only relying on a purported letter of allotment dated 1<sup>st</sup> May 1976 as evidence of title. The said letter is not evidence of title and in any event the Plaintiffs and the aforesaid 2500 residents of Garsen have lived on the property for more than 12 years openly and continuously and the 1<sup>st</sup> Defendant is as a result barred by the Limitation of Actions Act from recovering the property through eviction; and**

**d) There are more than 5000 people living or deriving a living from the suit property which also has cemeteries and permanent structures and unless the orders sought are granted, the said 5000 people will be rendered destitute and homeless as they will be forced to evacuate the land.**

3. The Application is opposed. By Grounds of Opposition filed herein dated 11<sup>th</sup> December 2018 by the Honourable the Attorney General (the 4<sup>th</sup> Defendant/Respondent) on its behalf and for the Chief Land Registrar and the Cabinet Secretary, Lands and Physical Planning named herein respectively as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Respondents, they object to the application on the grounds:-

**1. That whereas the Applicants are seeking several orders against the 2<sup>nd</sup> Respondent they have not alleged any procedural or substantive irregularity occasioned by the 2<sup>nd</sup> Respondent herein as to support the issuance of the same as against him;**

**2. That the application is premature as the applicants have not exhibited proof of prior request for the documents alluded to in prayers No. 4 and 5 of the Notice of Motion and refusal by the 2<sup>nd</sup> Respondent to accede to the said request;**

**3. That no prima facie case is established from the pleadings of this case that would remotely suggest that the 2<sup>nd</sup> Respondent has any likelihood of infringing the Applicants' Constitutional right of access to information.**

**4. That the Applicants have not met the threshold granting of an injunction and/or the prayers sought against the 2<sup>nd</sup> to 4<sup>th</sup> Respondents.**

**5. That from the evidence adduced before this Honourable Court there is no basis for any suspicion or fear that the 2<sup>nd</sup> Respondent will infringe on the Applicants' rights as provided under Article 35 of the Constitution; and**

**6. That no allegation of irregularity, or illegality has been made or can be construed from the pleadings and evidence adduced against the 2<sup>nd</sup> Respondent.**

4. I have perused and considered the Plaintiffs' application and the response thereto by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants. I have equally perused and considered the written submissions and authorities placed before me by Mr. John Bwire, Learned Counsel for the Plaintiffs and Mr. Mwarome Munga, Learned State Counsel appearing for the 2<sup>nd</sup> to 4<sup>th</sup> Defendants. Messrs Haganda Private Ranching Company Ltd (the 1<sup>st</sup> Defendant) and the National Land Commission (the 2<sup>nd</sup> Interested Party) neither entered appearance nor filed any response to the application. The County Government of Tana River (the 1<sup>st</sup> Interested Party) entered appearance through the same Counsel appearing for the Plaintiffs but did not respond to the application.

5. It was the Plaintiffs case that they have together with 2500 other residents of Garsen Township been residing on and using LR No. 13599 (the suit property) for decades and that as a result, they have built their homes, buried their loved ones on the land and used portions thereof for farming and grazing their livestock. The Plaintiffs assert that their use of the suit property as aforesaid has been open, peaceful, continuous and without interruption from any quarters.

6. Without giving any dates, the Plaintiffs assert that "very recently", persons identifying themselves as the 1<sup>st</sup> Defendant's officers visited the suit property in the company of Police Officers and arrested several residents of Garsen and charged them with alleged offences of

trespass before the Garsen Law Courts as a means of harassing them.

7. The Plaintiffs aver that it is the 1<sup>st</sup> Defendant-Haganda Private Ranching Company Ltd which was trying to harass them out of the land they had occupied for more than five (5) decades. It is the Plaintiffs' case that the said 1<sup>st</sup> Defendant is doing so in reliance of a Letter of Allotment purportedly issued to itself on 1<sup>st</sup> May 1976 to carry out ranching activities over the suitland for 45 years.

8. The Plaintiffs contend that the said Letter of Allotment is not any evidence of title upon which the 1<sup>st</sup> Defendant can rely to evict them and more so given their continuous and uninterrupted occupation of the suit property for a period exceeding 12 years. Accordingly they urge this Court to restrain the 1<sup>st</sup> Defendant by themselves, their agents or servants from evicting them, dispossessing them or in any manner whatsoever interfering with their use and occupation of the suit property.

9. As it were, the 1<sup>st</sup> Defendant has neither entered appearance nor responded to the Plaintiffs application. From a perusal of the record herein, when this matter came up for hearing on 18<sup>th</sup> December 2018, the Court was informed by Counsel holding brief for Mr. Nyongesa Advocate that all the parties sued herein had been served as per an Affidavit of Service filed in Court on that morning.

10. Having retired to prepare this Ruling, this Court had occasion to peruse and consider the Affidavit of Service sworn by one Patience Lugo and filed in Court on 18<sup>th</sup> December 2018. The same does not make any reference to any service done upon the 1<sup>st</sup> Defendant.

11. In the absence of any service upon the 1<sup>st</sup> Defendant, I am unable to make any decision against them as to do so would amount to condemning them unheard. In that respect, I did not find any basis to consider prayer No. 3 of the application.

12. In regard to Prayer No. 5, the Plaintiffs have urged this Court to issue orders directing the 5<sup>th</sup> and 6<sup>th</sup> Defendants to supply to them a number of documents as listed thereunder under Prayers 5(a) (b), (c), (d) and (e). As it were, in the matter before me there are only four (4) Defendants and two (2) Interested Parties. The Plaintiffs' Counsel other than representing the Plaintiffs also represents the 1<sup>st</sup> Interested Party. It was therefore not clear to me against whom the Plaintiffs were seeking the prayers listed under paragraph 5 of their prayers.

13. Indeed, there was no evidence adduced before me to demonstrate that the Plaintiffs had sought to be provided with the listed documents and that the said 5<sup>th</sup> and 6<sup>th</sup> Defendants, whoever they may be, had declined to supply the same.

14. In the premises, it was evident that the Notice of Motion dated 22<sup>nd</sup> October 2018 was misconceived, premature and without any basis. The same is dismissed with costs to the 2<sup>nd</sup> to 4<sup>th</sup> Defendants.

**Dated, signed and delivered at Malindi this 25<sup>th</sup> day of June, 2020.**

**J.O. OLOLA**

**JUDGE**