



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC CASE NO. 1446 OF 2014**

**MOHAMED DAHIR (Suing through his duly authorized Attorney)**

**OMAR MOHAMED DAHIR.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**MAHAT OSMAN BERED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**ADAN GEDI SAMBUL.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**ABDIWAHAB ALI ABDI.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**MARYAM GEDI SHURIE.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**YUSSUF ABDI GUMO.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**MOHAMUD MOHAMED HASSAN.....6<sup>TH</sup> DEFENDANT/RESPONDENT**

**FATUMA KHALIF ALI.....7<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. On 10<sup>th</sup> March, 2015, the application dated 24<sup>th</sup> November, 2014 was urged before me by counsel for the plaintiffs and Counsel for the Defendants. I immediately upon the conclusion of the Advocate's submissions granted prayer No. 2 of the said Notice of Motion and reserved the reasons for my decision to 12<sup>th</sup> March, 2015. I now herewith return the reasons for my ruling.

2. Prayer No. 2 which was granted by myself read as follows:

*“A temporary injunction be hereby issued to restrain the Defendants/Respondents herein by themselves, their servants and or agents from alienating, selling or otherwise disposing of all that parcel of land known as Garissa Municipality/Block3/457 pending hearing and determination of this suit”.*

3. The brief background to the suit is that the plaintiff is the registered owner of the suit. the property was

apparently allocated to him in the year 2000. He holds a title duly registered on 19<sup>th</sup> December, 2000. The Certificate of lease was issued to the Plaintiff on 1<sup>st</sup> February, 2001. The Defendants contest the Plaintiffs ownership to the suit land. The contest is through Kamila Sarkor. The Plaintiff has once sued Kamila Sarkor in ELC 399 of 2009 at Garissa. That suit is still pending even though the court as had with the consent of both parties directed that the two suits be placed together and transferred to Nairobi for disposal. Admittedly, the two suits have not been consolidated.

4. The Plaintiff filed suit against the Defendants who claim to have brought the suit property or parts thereof from Kamita Sarkor. The Plaintiffs claims that the Defendants may sell the suit property or parts thereof to unsuspecting third parties. The Plaintiff acknowledges that the Defendants are in possession but does not wish to have them evicted. Rather the Plaintiff wants the status quo to be maintained until determination of the suit. It's for that reason the Plaintiff sought the second prayer which I allowed on 10<sup>th</sup> March, 2015.

5. The Defendants through Counsel Mr. Otieno contested the application. Firstly the Defendants stated that the application is an abuse of the process of the court as there was a similar application and similar suit already pending in ELC 399 of 2009. The Defendants also stated that he plaintiff had not established a prima facie case and that in any event he Plaintiff could be easily compensated as the land would be easily valued. The gist of the Defendants submission were that the Plaintiff's allocation and title were irregular as the land allocated to the Plaintiff was not situate where the suit property is. The Defendant also submitted that the Plaintiff's land was supposed to be less than one acre but now the title read more than or nearly 5 acres. The Defendants finally admitted that they had occupied the suit property for more than 5 years and as persons in possession the balance tilted in their favour as moreover they were bona fide purchasers for value without notice.

6. The Plaintiff on the other hand relied on **Section 26** of the **Land Registration Act** to prove that the Plaintiff was the registered proprietor whose title could not be impeached by the Defendants and was entitled to the protection of the court. The Plaintiff also stated that the Plaintiff was only interested in having the status quo maintained.

7. I reviewed the rival submissions and quickly made up my mind that the injunction was warranted. Foremost, the Plaintiff cannot be said to be in transgression of the ordinary court practicks. The Plaintiff has not abused the process of the court for the simple reason that the earlier suit had been fixed against Kamila Sarkor. The said Kamila Sarkor is not a party to this suit. The Defendants claim to be bona fide purchasers for value without notice. They are not setting up the same defence Kamila Sarkor set up in the earlier suit namely 399 of 2009. It is also to be noted that the court had directed that the two files be placed together.

8. Certainly, this was with the view that the case management strategy was to adopt a line where the two cases could be consolidated. I am aware that consolidation of suits is a case management strategy adopted when the parties now attend the pretrial conference and settle all pretrial issues as well as fix the trial timetable. At an opportune moment thus, the parties may have to fully address the court as to whether or not to consolidate the two cases. For the moment, I do not ascribe to the view that there is any abuse of process.

9. Secondly, I hold the view that the Plaintiff has shown that he has a prima facie case. He is the registered proprietor of the suit property which the Defendants claim to occupy. The Plaintiff holds a title in his name. It is registered. That fact is not disputed. The Defendants however state that the Plaintiff should not have been registered as proprietor. It is not lost to the court that the Defendants are not claiming that they are entitled to be registered as owners or be recognized as owners by virtue of an entitlement as allottees, the Defendants claim ownership as purchasers for value. I am satisfied that as the registered owner the plaintiff is entitled to the protection of the court until the title is impeached. This can only happen at trial as there has not been tendered to me any obvious evidence of illegality, fraud, misrepresentation or corruption to warrant and place doubts on the Plaintiff's title.

10. Even more crucial is the fact that the Defendants who claim to be bona fide purchasers for value

without notice have not demonstrated even on a preponderance of fact that they were purchasers from any person let alone the Plaintiff. There is no sale agreement. There is no evidence of payment of the purchase price. There is no evidence of any due diligence having been undertaken prior to any payment of the purchase price. In my view the Defendants in relation to the Plaintiff stand on a better foot when it comes to the question of ownership. The suit property ought to be secured.

11. I believe there is no need to determine whether or not damages may adequately compensate the Plaintiff. Neither should I delve into the issue of where the balance of convenience tilts as I have no doubts in my mind. The Defendants are not being moved as such. The possession they occupy whether rightfully or wrongfully will continue to subsist but they must not dispose of the property in anyway or part with possession. The status quo order is what best lends itself, as offered by Mr. Abdi, in the circumstances. The prayer granted is in one way of another an order for status quo. I agree let it be in force.

12. The costs of the application will also be in the case.

13. Orders and reasons accordingly.

**Dated, signed and delivered at Nairobi this 12<sup>th</sup> day of March, 2015.**

**J. L. ONGUTO**

**JUDGE**

**In the presence of:-**

..... for the Plaintiff/Applicant  
..... for the Defendant/Respondent