



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOY A
ELC APPEAL CASE NO. 7 OF 2014

GAMANA ABDI ALI APPLICANT/APPELLANT

VERSUS

DAHABA DUALERESPONDENT

RULING

This is in respect to the appellant/applicant's Notice of Motion dated 14th March, 2014 brought under **Order 40 Rule 1 and 2 of the Civil Procedure Rules** and **Section 3A of the Civil Procedure Act** seeking the following substantive prayers:-

1. *Spent*
2. *Spent*
3. *That a temporary injunction be issued against the respondent, her servants, agents and/or any other person claiming under her authority from constructing on, using any portion thereof, denying the plaintiff (sic) access to transferring ownership and or processing ownership documents for plot No. R2834 measuring 50 feet by 100 feet or in any other way interfering with plot No. R2834 and further the respondent be restrained from constructing, processing ownership documents in respect of plot No. R4625 pending the hearing and determination of the appeal.*
4. *Costs of the application be awarded to the applicant.*

The application was supported by the affidavit of GAMANA ABDI ALI the applicant herein and was based on the grounds set out on the face of the application.

The application was opposed and replying affidavit were filed both by the respondent and his lawyer STEPHEN GAKONYO WANYOIKE.

Submissions have been filed by both parties.

The subject of the dispute between the parties herein was plot No. R2834 and the same was heard at the Principal Magistrate's Court at Wajir. The Court made an order that the appellant (who was the plaintiff in the subordinate Court) was the owner of plot No. R2834 while the respondent (who was the defendant in the subordinate Court) was the owner of plot No. R4526. Having made those findings, the trial magistrate proceeded to refer the dispute to the County Government of Wajir directing the Minister of Lands of the said Government to survey the said plots and file a report to the Court which report would be final. A report was eventually filed and being dissatisfied with the same, the appellant did file an appeal and this application. It is the appellant's case that the report laid before the Court was biased and if it is implemented, the appellant's appeal will be rendered nugatory and she and her family will be left in the cold. It is therefore sought by the application to injunct the respondent from constructing on the property

or transferring ownership of the same pending the appeal.

In my view, the appellant has established good grounds for the orders sought in the Notice of Motion dated 14th March, 2014. Among the issues that will no doubt arise is whether in fact the trial Court delegated judicial functions to another body and if that was proper.

In the circumstances, I grant the orders sought in the said Notice of Motion.

Costs shall be in the appeal.

B.N. OLAO

JUDGE

3RD OCTOBER, 2014

3/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Otieno for Appellant – absent

Mr. Wanyoike for Respondent – present

COURT: Ruling delivered in open Court this 3rd day of October, 2014.

B.N. OLAO

JUDGE

3RD OCTOBER, 2014