



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 8 OF 2018

GIRIAMA RANCHING COMPANY LIMITED.....PLAINTIFF

VERSUS

1. ADAN AHAMED MHAMED YARE

2. BISHAR SHEIKH ALI

3. ADEN IBRAHIM MUNO

4. ABDI NOOR ABDULAHI NUNOW

5. OSMAN ABDI JAMA

6. MOHAMED OSMAN ABDI.....DEFENDANTS

RULING

1. I have before me for determination a Notice of Motion application dated 18th January 2018. By the said application the Plaintiff Giriama Ranching Company Ltd prays for an order of mandatory injunction compelling the six Defendants herein to remove all their livestock from the Plaintiff's parcel of land being LR No. 12785(CR No. 19142) situated at Bamba within Kilifi County. In addition, the Plaintiff prays for an order directing the Officer Commanding Station, Bamba Police Station to supervise the enforcement and compliance with that order.

2. The said application is supported by an affidavit sworn on 18th January 2018 by Rodgers Madzomba Unda, a Director of the Plaintiff and is based on the grounds:-

i) That the Plaintiff is the leasehold owner of the said parcel of land;

ii) That the Defendants have without any colour of right and in utter infringement of the Plaintiff's rights trespassed into the said parcel of land with hundreds of livestock, including, cattle, camels, goats and sheep and are illegally grazing the same thereon and wasting away resources belonging to the Plaintiff; and

iii) That unless the Defendants are ordered to vacate the land, the same shall be subjected to waste, destruction, alienation and illegal use and the Plaintiff's stand to suffer irreparable loss and damage.

3. I was unable to find any response to the application by the 1st Defendant. However in a Replying Affidavit filed herein on 30th April 2018, the 2nd Defendant-Bishar Sheikh Ali avers that he has never been accused at nor summoned by Bamba Police Officers in regard to any alleged trespass on the suit property. He further avers that he is not capable of preventing or stopping any party from entering the suit property since he is neither a resident, owner nor a person in possession thereof.

4. The 2nd Defendant further denies interfering with the Plaintiff's property in any way and accuses the Plaintiff of wrongfully enjoining him in this suit.

5. The 3rd Defendant Aden Ibrahim Munno filed an Affidavit in Reply on 9th February 2018. He avers that the Plaintiff's application is a disguised request for summary Judgment and urges the Court to reject the same as the place where he grazes his livestock was given to him

by the local community of Gede Sub location which owns the land.

6. The 3rd Defendant further avers that he was shown where to graze after extensive consultations with the area Assistant Chief and he has now lived with the community and grazed his livestock thereon for close to seven years.

7. In his Replying Affidavit filed herein on 20th February 2018, the 4th Defendant-Abdi Noor Abdullahi Nuno denies that he is a herdsman and/or that he owns livestock. He denies being a resident of the Bamba area and avers that the only time he has visited Kilifi County is when he visited the 3rd Defendant who is his relative.

8. In another Replying Affidavit filed herein on 17th April 2018, the 6th Defendant Mohamed Osman Abdi (on his own behalf and that of the 5th Defendant-Osman Abdi Jama) avers that the land on which the 5th Defendant and himself graze was acquired by them pursuant to a Lease Agreement dated 14th November 2017 executed with representatives of the Wadha Community who are the owners thereof.

9. The 5th and 6th Defendants therefore deny that they have trespassed onto the Plaintiff's land as alleged or at all.

10. I have considered the Plaintiff's application and the various responses thereto by the 2nd to 6th Defendants. I have equally perused and considered the written submissions as filed by the Learned Advocates for the parties.

11. The considerations for granting interlocutory mandatory injunctions were stated by the Court of Appeal in *Kenya Breweries Ltd & Another –vs- Washington O. Okeyo(2002) 2KLR* where the Court stated:-

“The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury’s Laws of England 4th Edition Paragraph 948 which reads:-

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the Court thinks ought to be decided at once or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a match on the Plaintiffs....a mandatory injunction will be granted on an interlocutory application.”

12. Arising from the foregoing, it is evident that a Court considering an application for interlocutory mandatory injunction must be satisfied that there are not only special and exceptional circumstances, but also that the case is clear.

13. In the matter before me, the Plaintiff avers that it is the leasehold owner of the parcel of land known as LR No. 12785. A copy of the Certificate of Title annexed as RMU-2 reveals that this is a massive parcel of land measuring 26745 hectares. From the material placed before me, it was not apparent if the parcel of land were fenced and/or if there were clear and demarcated boundaries thereof.

14. As it were, some of the Defendants have annexed Lease Agreements with either the Wadha or Gede Communities who equally claim to own the parcels of land on which some of the Defendants are grazing their land.

15. I did not in the circumstances of this case think this is a clear case in which it could be said that the Defendants have clearly trespassed upon the Plaintiff's land. I think it would be important first for the Plaintiff to present clearer evidence such as a Survey Report to show the extent of encroachment if any to their vast parcel of land. Otherwise there is a possibility that granting the orders sought herein at this stage may lead to an injustice.

16. Accordingly, I am not persuaded that this is a matter that warrants the orders of a mandatory injunction at an interlocutory stage. The application dated 18th January 2018 is henceforth dismissed.

17. The costs shall be in the cause.

Dated, signed and delivered at Malindi this 29th day of May, 2019.

J.O. OLOLA

JUDGE