



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT GARISSA**

**ENVIRONMENT AND LAND CASE NO. 8 OF 2017**

KALTUMA HASSAN IBRAHIM.....1<sup>ST</sup> APPLICANT/ PLAINTIFF

MAKAY IBRAHIM ISSACK.....2<sup>ND</sup> APPLICANT/PLAINTIFF

SAADIYA M. IBRAHIM.....3<sup>RD</sup> APPLICANT/PLAINTIFF

ABDISALAN AHMED LAKICHA (Suing as the officials of

ARDA-ADHI FARMERS) WOMEN GROUP.....4<sup>TH</sup> APPLICANT/PLAINTIFF

**VERSUS**

ALI ROBOW.....1<sup>ST</sup> RESPONDENT/DEFENDANT

ADAN DISS ROBOW.....2<sup>ND</sup> RESPONDENT/DEFENDANT

ABDI DISS ROW.....3<sup>RD</sup> RESPONDENT/DEFENDANT

ABDI DISS ROBOW alias ABDI YARE.....4<sup>TH</sup> RESPONDENT/DEFENDANT

**RULING**

**INTRODUCTION:**

1. The application before me is the Notice of Motion dated 14<sup>th</sup> December 2017 brought under Order 40 Rule 1 Civil Procedure Rules. The Applicants are seeking the following orders:

**1) (Spent).**

**2) That this Honourable Court be pleased to grant order of temporary injunction barring and restraining the Respondents, their agents, servants or employees from trespassing into, entering, putting up building, undertaking any works or in any other way whatsoever and howsoever interfering with the Applicants' unsurveyed land situated at Shafshafey Location within Mandera County pending the hearing and determination of this suit.**

**3) That an injunction barring and restraining the Respondents, their agents, servants or employees from trespassing into, entering, putting up building, undertaking any works or in any other way whatsoever and howsoever interfering with the Applicants' unsurveyed land pending the hearing and determination of the lower court suit.**

**4) That the costs of this application be provided for by the Respondents.**

2. The application is supported by six (6) grounds shown on the face of the said application and an affidavit sworn by **Saadiya M. Ibrahim** on 14/12/2017.

3. In her supporting affidavit the said **Saadiya M. Ibrahim** deponed that sometime early in the year 2017, the Respondents trespassed into the suit land and made wanton destruction.

4. The deponent also stated that despite having filed a suit in the ELC Court at Garissa, the Respondents have continued to trespass, working,

invading, grazing, cultivating, and are now threatening to use force to stop the Applicants from accessing the suit land. It is further deponed that unless this Honourable Court grants the orders for the preservation of the subject land, there is likelihood of clan clashes erupting.

5. At the time of hearing the application interparties there was no attendance by the Respondents or their Advocate on record.

6. After the court was satisfied that the Respondents were properly served through the firm of Mosei & Co. Advocates, it directed that the case do proceed exparte.

7. I have carefully considered the averments contained in the supporting affidavit and the grounds shown on the face of the application. I have also considered the oral submissions by counsel for the Exparte Applicant.

8. Whereas the application is not opposed, the court has an obligation to determine whether the principles for the grant of injunctive orders have been established as set out in the celebrated case of *Giella v Cassman Brown Ltd [1973]*.

9. From the deposition by **Saadiya M. Ibrahim**, the Applicants have filed another suit in the ELC Court at Mandera. The deponent of that affidavit has not disclosed the case number and the year when the alleged ELC Case in Mandera Law Courts was filed. The deponent has not also disclosed the reasons why they have elected to file another case before this court in Garissa while another active case in respect of the same subject matter is pending before another court of competent jurisdiction. The Applicant has not attached any documents of ownership to the suit land to the supporting affidavit.

10. In the classicus case of *Giella v Cassman Brown Co. Ltd (Supra)* the court set out the following three (3) principles that a court must satisfy itself before granting orders of injunction as follows:-

**(1) The Applicant must establish a prima facie case with a probability of success at the main hearing.**

**(2) The Applicant must demonstrate that he will suffer irreparable injury and that damages will not be sufficient remedy; and**

**(3) Where the court is in doubt it shall decide the matter on a balance of convenience.**

11. The subject of this suit is a parcel of land which is unsurveyed measuring approximately 22½ acres situated at Shafshafey Location within the County of Mandera.

12. The prima facie evidence of ownership of land is the registration of the owner in the proprietorship section. Under section 26 of the Land Registration Act of 2011, the law provides as follows:

**“26 The certificate of title issued by the Registrar upon Registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge....”**

13. It is crystal clear from my reading of that section that the registration of a proprietor in the certificate of title is a prima facie evidence of ownership of land. The Applicants in this case have not attached a certificate of title as prima facie evidence of ownership. The Applicants have not also shown that they will suffer irreparable injury and that damages will not be sufficient remedy. In fact the Applicants have not demonstrated what injury they will suffer should the orders sought not be granted.

14. This case in my view is one where the balance of convenience lies with the dismissal of the application for lack of merit which I hereby do.

15. Since an award of costs is a discretionary power and there being no opposition to the application, I make no orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2018.**

.....

**HON. E. C. CHERONO**

**E.L.C. JUDGE**

**In the presence of:**

1. Ijabo – Court Clerk

2. Plaintiffs/Applicants (absent)

3. Defendants/Respondents (absent)