



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

ENVIRONMENT AND LAND CASE NO. 67 OF 2017

AHMED BASHIR ABDI.....PLAINTIFF/APPLICANT

VERSUS

B. M. MULE, GARISSA COUNTY

DIRECTOR OF HOUSING IN THE MINISTRY OF

TRANSPORT, INFRASTRUCTURE, HOUSING AND

URBAN DEVELOPMENT.....1ST DEFENDANT/RESPONDENT

GARISSA COUNTY COMMISSIONER.....2ND DEFENDANT/RESPONDENT

THE COUNTY GOVERNMENT OF GARISSA.....3RD DEFENDANT/RESPONDENT

RULING

INTRODUCTION:

1. The application before me is the Notice of Motion dated 22nd December 2017 brought under Articles 22, 23, 162 (2) (b), 258 and 259 of the Constitution, section 13 (2) (a) and (b) and 7 and 19 of the Environment and Land Act.

2. The Applicant is seeking the following orders:

1) (Spent)

2) (Spent)

3) That the application for interim relief be heard in Nairobi in the first instance and thereafter transferred to Garissa where the suit property is situate.

4) That this Honourable Court be pleased to grant an Ex-Parte interim injunction restraining the Respondents and/or any third parties whether by themselves or through their agents or assigns from interfering with the Applicant's quiet possession of the suit property known as Government House Number MPD/GSA/7 in Garissa County pending the interparties hearing and determination of this application.

5) That this Honourable Court be pleased to grant an Ex-Parte interim injunction restraining the Respondents and/or any third parties whether by themselves or through their agents or servants from interfering with the Applicant's quiet possession of the suit property known as Government House Number MPD/GSA/7 in Garissa County pending the interparties hearing and determination of the suit filed herewith.

6) That if need be, a mandatory interim injunction be issued compelling the Respondents to restore the Applicant's occupation of the suit property pending the interparties hearing and determination of this application and the suit.

7) That the costs of this application be provided for.

3. The application was filed contemporaneously with the suit herein under certificate of urgency supported by grounds on the face of the

application and the affidavit of the Applicant sworn on 22/12/2017.

4. On 16th February 2018, the Office of the Hon. Attorney General appointed one Oscar Eredi to act on her behalf and on 21st February 2018 the Hon. Attorney General filed defence to the Plaintiff's claim and a replying affidavit. Attached to the supporting affidavit are numerous correspondences.

APPLICANT'S SUBMISSIONS:

5. The Applicant through his counsel Abdirazak submitted that his client was wrongfully evicted through the use of police force by the County Commissioner, Garissa County in conjunction with one B. M. Mule who is the County Director of Housing, Ministry of Housing, Transport and Urban Development.

6. The learned counsel submitted that the said officers who are civil servants committed acts of abuse of office by sending three (3) Land cruisers full of police officers to break into his client's dwelling house. The counsel further submitted that the 1st Respondent had given his client notice to vacate the suit premises but was evicted before the expiry of the notice.

7. At the time the wrongful eviction was being carried out, the learned counsel submitted that his client and his family were away on vacation to Mombasa. As a result of the wrongful eviction his client's properties were damaged. The eviction of his client was done to bring in the AP Commandant of the RDU Unit.

8. Mr. Abdirazak further submitted that his client's wife is currently working with the County Government of Garissa and that she had every reason to occupy the suit property. He further submitted that the Applicant was transferred to Mombasa and that his wife was in the process of transferring the house to herself.

RESPONDENTS' SUBMISSIONS:

9. The Respondents through the learned counsel Mr. Muhitin submitted that the application is incompetent as the Applicant is seeking mandatory orders which the court is incapable of granting at an interlocutory stage.

10. Mr. Muhitin further submitted that the Applicant is a stranger and intruder in the suit premises since he has not disclosed how he entered into the suit property.

11. The counsel for the Respondent finally submitted that the lawful tenant occupying the suit premises is one A. A. Abdile who has been lawfully assigned the suit premises upon executing a lease agreement which is attached to the pleadings marked **BMM3**.

12. I have considered with anxious care the application and the supporting affidavit. I have also considered the replying affidavit and the submissions by both counsels for the Applicant and the Respondents.

13. Orders of injunctions are equitable reliefs which are granted upon an Applicant satisfying the court that he has meet the principles as set out in the celebrated case of **Giella v Cassman Brown Ltd [1973] EA**. The three principles are set out as follows:

- (1) An Applicant must establish prima facie case with high chances of success at the main trial.**
- (2) An Applicant must show that he will suffer irreparable injury and that damages will not be sufficient.**
- (3) Where the court is in doubt, it will decide the case on a balance of convenience.**

14. The Applicant has not cited Order 40 Civil Procedure Rules which is the applicable law for the grant of injunctive orders. Parties are bound by their pleadings.

15. The Applicant in application dated 22nd December, 2017 has cited Articles 22, 23, 162 (2) (b), 258 and 259 of the Constitution and sections 13 (2) (a) and (d) and 7 and 19 of the Environment and Land Court Act.

16. These provisions do not cloth the court with the powers to grant the Applicant the orders being sought. In my view, the application dated 22nd December, 2017 is bad in law and incompetent. The same is out for dismissal. When an application is incompetent it will be a waste of judicial time to delve into the merits or otherwise.

17. In the final analysis, the application dated 22nd December, 2017 is hereby dismissed with each party to bear his own costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 20TH DAY OF MARCH, 2018

.....

HON. E. C. CHERONO

E.L.C. JUDGE

In the presence of:

1. Mr. Faruq for 3rd Respondent
2. M/s Balkheisa holding brief for Abdirazak for Applicant
3. Ijabo – Court Clerk.