



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 9 OF 2018**

**ABDI NOOR SHURIE.....PLAINTIFF/APPLICANT**

**VERSUS**

**HALIMA BUNDID.....DEFENDANT/RESPONDENT**

**RULING**

**INTRODUCTION**

The applicant who is also the plaintiff filed this suit simultaneously with this application under certificate of urgency on 19/02/2018. This application is brought under Article 22,23,40 and 47 of the Constitution of Kenya 2010, Section 1A, 1B and 3A CPR. Order 40 Rule 1, 2 and 7 and Order 51, Rule 1 CPR. He sought the following orders;

**1. Spent**

**2. THAT the Honourable Court be pleased to issue an interim injunction restraining the respondent/defendant either through themselves, servants or agents or any person from trespassing, dealing, selling, transferring the property or interfering with it in anyway, the property described as Plot No. 1906 situated at Bulla Sarman that measures 0.11 hectares pending hearing and determination of the application.**

**3. The OCPD Garissa County pending the hearing of the main suit herein be directed to prevent invasion and attacks of the plaintiff/applicant and his property.**

**4. THAT this Honourable Court do issue any further order that may deem just and expedient to meet the end of justice.**

**5. The costs of this suit.**

In the supporting affidavit sworn same date, the applicant averred that he is the registered owner of the suit property described as GSA/1906 which he inherited from his late father. The applicant further averred that the suit property was registered in his name after he made an application to the defunct Municipal Council of Garissa who called a special full council meeting on 13<sup>th</sup> June 1997 and approved the application. He attached copies of minutes of the said special full council meeting marked ANS-1.

The applicant has been paying annual rent for the said plot as and when they fall due and payable. He also attached copies of receipts marked ANS-2,3 & 4 respectively.

In paragraph 5 of the supporting affidavit the applicant averred that the respondent/defendant has unlawfully, illegally and without any right trespassed and camped at the suit property. He raised the issue with the area chief, the police and the County Government of Garissa with no success.

In a replying affidavit sworn and filed on 21/3/2018, the respondent opposed the applicant's application saying that she does not know anything concerning the applicant's plot. The respondent averred that she is the owner of a plot registration No. GSA 1898 in Bulla Daaro which she was given by her father as a gift in 1978 when she got married and has lived in that plot uninterrupted for more than 30 years. The respondent also attached a copy of an affidavit sworn by her father one Bundid Haji Ibrahim marked HAH 1 in which he averred that he has occupied the plot from 1953 until 1978 when he gave to the respondent as a gift during her wedding. The respondent also attached numerous documents in opposition to the application which include a letter from the National Land Commission dated 03/11/2017 and a receipt for Kshs.1,600/= from the Municipal Council of Garissa. When the application came up for interparties hearing on 21/3/2018, the parties through their legal representatives agreed to dispose of the same by way of written submissions.

I have considered the averments by both the applicant and the respondent in their documents both in support and in opposition to this

application. I have also considered the submissions by counsels for the applicant and the respondent. The application before me is an interlocutory one seeking interim injunction orders pending the hearing of the main suit. That is confirmed from the plaint where the applicant is seeking permanent injunction among other orders. From the applicant's application, the supporting affidavit and the attached documents, the plot in dispute is given as No. GSA/1906 situated at Bulla Sarman Garissa County measuring 0.11 hectares. In her replying affidavit, the respondent denies any knowledge of the applicant's plot and averred that she has not trespassed or encroached into the applicants plot No. GSA/1906. The respondent averred that she is the proud owner of a plot No. GSA/1898 situated in Bulla Daaro where she has lived peacefully without any interruption from the year 1978 when she was given by her father during her marriage as a gift. The document attached to the replying affidavit in opposition to the applications clearly indicates that the suit property No. GSA/1906 is separate and distinct from hers which is plot No. GSA/1898 Bulla Daaro. In my view, the applicant has not proved that the respondent has encroached on his property which from the documentary evidence shows that the two plots are separate and distinct. In the case of **Mrao -Vs- First American Bank of Kenya Ltd & 2 Others (2003) KLR page 125**, the court defined prima facie as follows;

**“...as a case in which the material presented to the court properly directing itself will conclude that there exists a right which has been infringed by the opposite party, as to call an explanation or rebuttal from the latter.”**

I am not satisfied that the applicant has demonstrated that the respondent has encroached and therefore infringed his right over plot No. GSA/1906 to warrant protection by a court of equity by way of an injunction. The applicant has not proved a prima facie case and neither has he shown that he will suffer irreparable injury that cannot be compensated by damages.

Deciding this case on a balance of convenience, I find and hold that this is a frivolous application which I hereby dismiss with costs to be in the cause.

It is so ordered.

**Read, Delivered and Signed in the open court this 26<sup>th</sup> day of June 2018.**

**Hon. Justice E. C. Cherono**

**ELC JUDGE**