



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND HIGH COURT AT GARISSA

ELC NO 28 OF 2017 (Formerly Meru ELC No.181 of 2014)

ABDULLAHI YUSSUF FARAH.....PLAINTIFF

VERSUS

HUSSEIN DALDAL & 18 OTHERS.....DEFENDANTS

RULING

INTRODUCTION

This is a ruling arising from the plaintiff's application dated 2/01/2015 and filed the same date. The applicant is seeking the following orders:-

- 1. THAT the application be certified urgent and heard exparte in the first instant.**
- 2. THAT a temporary injunction be issued against the respondents, their agents, servants and or any other person claiming under their authority from transferring to themselves or any other persons, processing ownership documents, selling and or constructing any building, access roads or structures on plot number 7249 measuring 50ft X 150 ft as contained in deed plan number 354864 and in and Reference Number 13607/290 in Wajir town or in any other way dealing with the said plot pending hearing and determination of the application.**
- 3. THAT a temporary injunction be issued against the respondents, their agents, servants and or any other person claiming under their authority from transferring to themselves or any other persons, processing ownership documents, selling and or constructing any building, access roads or structures on plot number 7249 measuring 50ft X 150ft as contained in deed plan number 354864 and in Land Refence Number 13607/290 Wajir town or in any other way dealing with the said plot pending hearing and determination of the suit.**
- 4. THAT the applicant be granted leave to amend the plaint.**
- 5. THAT costs of the application be awarded to the applicant.**

The application is supported by grounds shown on the face of the said application and an affidavit sworn by the applicant on 2nd January 2015. Annexed to that affidavit are numerous documents marked AYP1.

On 17th March 2015, the defendant filed a replying affidavit opposing the plaintiff's application. The replying affidavit is further supported by numerous documents including a Physical Development Plan of Wajir town.

THE PLAINTIFF'S CASE

In the supporting affidavit, the plaintiff contends that he is the lawful owner of all the plot known as No.7249 measuring 50ft X 150ft contained in deed plan No.354864 also known as Land Reference No.1360/290. The plaintiff also argues that he has been and continues to pay land rent and rates ever since the plot was allocated to him sometime in 1998 by the defunct County Council of Wajir. He avers that sometime in the year 2007, the defendants unlawfully and without any color of right invaded his plot and occupied portions of his land by constructing temporary structures otherwise popularly known as 'Kiosks' On or about 30/12/14.

the 20th defendant through the executive member in charge of Lands, Housing summoned him in their office where he was informed that they were going to construct county offices on his plot. The plaintiff now wants the unlawful actions of the 20th defendant stopped.

THE DEFENDANTS CASE

The defendant's position through their replying affidavit is that according to the documents in their custody, the suit property is a public utility which was given to Provincial Administration (Chief's Camp) in the year 1970 and that upon being given the land, the Chief's Office was constructed the following year in 1971. Since then the Chief's Office has been in the disputed plot to date. She attached photographs of the Chief's Office marked AIA1. The defendant also attached a copy of the original Wajir town Physical Development Plan marked AIA2. The 20th defendant stated that the 1st -19th defendants are business people who are occupying the portions in question with consent as licensees and that their license will terminate upon termination/withdrawal of the license.

ANALYSIS AND FINDINGS

The order being sought by the plaintiff is an injunction under Order 40 Rules 1 &2 CPR. The court has severally pronounced itself on the principles governing the grant of injunction orders in the locus classicus case of GIELLA –VS- CASSMAN BROWN & CO. LTD (1973) EA 358. The three principles are as follows:

- 1. An application must establish a prima facie case with a possibility of success.**
- 2. An applicant must demonstrate that an award of damages will not be an adequate remedy and**
- 3. Where the court is in doubt, the case will be decided on a balance of convenience.**

From the documents attached to the supporting affidavit which includes a letter of allotment issued by the Commissioner of Land, a deed plan and rent payment receipts. The 20th defendant has denied the allocation of the plot to the plaintiff saying that the plot was a public land which was allocated to the area chief in 1970 and that in 1971, the chief's office was constructed and has been under occupation since then to date. The documentary evidence adduced by the parties through affidavit evidence and the submissions by counsels appearing on behalf of both the applicant and the respondent have been considered.

The applicant has put forth documents of ownership issued to her by the defunct County Council of Wajir including a letter of allotment dated 23rd June 1999. The County Government of Wajir who is the 20th respondent took over from the defunct County Council of Wajir. The County Government of Wajir does not seem to recognize the documents of ownership of the disputed plot by the applicant saying that the plot belongs to the Chief's Office who had been allocated way back in 1970 and that they have been in occupation of the same ever since then. Comparing the two sets of documents presented by both sides of the divide, this case can best be decided on the third principle. In the upshot, I hold that the balance of convenience in this matter is to give the parties an opportunity to tender their respective evidence in a full

trial. In the result therefore, the application dated 20th January, 2015 is disallowed and the following orders issued hereby:-

- 1. The application dated 20/01/2015 be and is hereby dismissed with costs to abide the event.**
- 2. The plaintiff/applicant is hereby granted leave to amend and file his plaint within 14 days from today.**

READ, DELIVERED and SIGNED in the open court this 27th day of July 2017.

E. C CHERONO (MR)

ELC JUDGE

In the presence of:

1. Mr. D. K Wanyoike for Respondent
2. Mr. Issa HB Ingutya for Appellant