



REPUBLIC OF KENYA
THE ENVIRONMENT & LAND COURT

AT GARISSA

ELC CASE NO. 14 OF 2017

MARKABA ABDULLAHI ALASOW.....PLAINTIFF

VERSUS

AMINA ABDI RAHOY.....1ST DEFENDANT

SUBAN ABDULLAHI.....2ND DEFENDANT

RULING

The application before me is the Notice of Motion dated 13th March 2017 brought under Section 1, 1A, 3 3A and 63 (e) CPA and Order 40 Rule (1) (2) and 4 as read with Order 51 Rule 1 CPR. The applicant is seeking the following orders:

1. (spent)

2. THAT the court be pleased to grant a temporary injunction restraining the respondents from trespassing on, wasting construction on, alienating or otherwise interfering or dealing with the plaintiff's property being plot No. 044 integrated pending the hearing and determination of this application.

3. THAT the court be pleased to grant a temporary injunction restraining the respondents from, trespassing on, wasting, constructing on, alienating or otherwise interfering or dealing with the plaintiff's property being plot No. 044 integrated pending hearing and determination of this suit.

4. THAT this Honourable court be pleased to order the OCS Mandera supervises the enforcement of order 2.

5. THAT the applicants be at liberty to apply for any further orders as may be deemed necessary by this Honourable Court.

6. THAT the costs of this application if any be borne by the respondents.

The application is supported by grounds sworn on the face of the said application and a supporting affidavit sworn by the Applicant on 13th March, 2017.

The supporting affidavit is attached with numerous documents of ownership of the said plot issued by the

County Government of Mandera marked MAA-1 MAA2, MAA3, MAA4 and MAA5 respectively which include land rent receipts.

The respondents opposed the application and filed two affidavits sworn on 9th May, 2017 and a further affidavit sworn on 10th July, 2017 respectively. In the first replying affidavit, the respondent stated that she was allocated the suit land by the Mandera County Government vide letter of allotment dated 3/2/2014 measuring 15x30M and that she has lived in the plot since 2003 to date. In her further affidavit sworn on 10th July, 2017 the respondent has attached a letter from the Lands, Housing and Physical Planning Mandera County allocating plot No. 48 to one TOQRA ABDI RAHOU measuring 15x30M. Respondent also attached a receipt from the County Government of Mandera dated 5/2/2014 marked AAR 2 for Ksh.2,000/= being land demarcation fees.

APPLICANT'S CASE

The applicant submits that he is the owner of plot No. 044 while the respondents lay claim to different parcels of land. He further states that he was issued with a certificate of ownership by the County Government of Mandera. He therefore submits that the certificate of ownership is a prima facie evidence that he is the owner of the suit property. He cited the case of WRECK MOTORS ENTERPRISES –VS_ COMMISSIONER OF LANDS & 3 OTHERS CA NO. 71 OF 1997 (unreported) The applicant also cited the celebrated case of GIELLA –VS- CASSMAN BROWN LTD (1973) 358. The applicant further relied in the case of MRAO –vs- FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR at 125.

RESPONDENT'S CASE

The respondents contend that they are owners of plot No. 48 measuring 15 x30m issued to them by the County Government of Mandera vide letter of allotment dated 3/2/2014. They also content that she paid the demarcation fees of Ksh.2,000/= and were issued with an official receipt.

ANALYSIS AND DETERMINATION

The applicant's application is premised on the equitable relief of an injunction whose principals were set out in the celebrated case of GIELLA –VS- CASSMAN BROWN CO. LTD (1973) EA 358 in that the case the court set out the three principles for the grant of injunction as follows:

- 1. The applicants should establish a prima facie case with a high probability of success at the main hearing.**
- 2. The applicant should demonstrate likelihood of substantial injury should the orders not be granted and**
- 3. Where the court is in doubt it shall decide the case on a balance of convenience.**

The question I now pose is whether the applicant has shown the first two principles and if the answer is in the negative, the case will be decided on the third principle.

The property in dispute is a public land held by County Government of Mandera in trust for the residents of that town. The applicant has produced documents of ownership of the suit property including a certificate of land ownership no. 000124, a letter of allotment dated 3/2/2014, copies of receipts for rent payment for the year 2014, 2015 and 2016. The respondents have opposed this application and also claiming the same property under a different allocation No. 48. They have attached a letter of allotment from the department of Housing and Physical Planning Mandera County Government dated 3/2/2014. The respondents also attached a receipt for Kshs.2,000/= being demarcation fees. It appears to my mind that this is a case of double allocation. The purported letters of allotment were not accompanied by physical development plan showing the map and the specific plot allocated to the person named. There are also no minutes of the counsel or allocating committee to the allottee. These are basic requirements in

cases involving allotment of public land held by the County Council or the County Government in trust for the community.

In the absence of that basic requirement, I am unable to say whether the applicant is the actual owner of the suit property. This court is not satisfied that the applicant has established the principles for the grant of the equitable relief being sought.

I therefore decide this case on a balance of convenience and on my view, the ends of justice will be note by dismissing the application dated 13th March, 2017 which I hereby do. The costs of the application shall abide the event.

It is so ordered.

Read and signed in the Open Court this 14th day of December, 2017.

E. C Cherono (Mr.)

ELC Judge

In the presence of:

1. Mr. Nyaga for respondent
2. Mr. Nambugu holding brief for Kirwa for applicant.