



**Mohame v Abdi & another (Environment & Land Case
E033 of 2023) [2024] KEELC 3728 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3728 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E033 OF 2023**

EK MAKORI, J

MAY 9, 2024

BETWEEN

DIRE OLOW MOHAME PLAINTIFF

AND

BARE MUHAMED ABDI 1ST DEFENDANT

ABDILE HASSAN DUALE 2ND DEFENDANT

RULING

1. On 2nd of November 2023, this Court delivered a ruling on an application dated 17th May 2023 seeking:
 - a. Spent
 - b. Spent (the application was certified not urgent on grounds that it sought mandatory orders ex parte. See the proceedings by this court dated 18th May 2023.
 - c. That this court be pleased to grant a temporary injunction for 14 days restraining the Defendants/Respondents by themselves, their servants, agents, heirs, employees, and all claiming through them from trespassing/dealing/interfering/undertaking grazing their livestock on the leased property from Chakama Ranching Company Limited Plot No. 17503, Land Reference 13472/1 measuring 50,000 acres, pending the hearing and determination of this suit.
 - d. That the Respondent be condemned to pay the costs of this application.”



2. After a meticulous review of the materials and submissions, this Court dismissed the entire application with costs, providing the following reasons for the decision:

“After considering the materials placed before me, I have concluded that the current application has not achieved the Giella test to warrant the issuance of a temporary injunction. The reason I have reached that conclusion is that the applicant approached this court seeking:

“14 days temporary injunction”

The application was filed on the 18th of May 2023. 14 days lapsed on the 21st day of May 2023. Even if I were to grant those orders, the application has already been spent.

On the merits of the application, the applicant claims to have leased 50,000 acres from Chakama Ranch Limited. The land in question seems to have disputes pending before this court, pitting it with the Local Community. The Respondent also seems to have leased the land from inhabitants (the “Giryamas” on the ground). This warring interest will require a full deliberation and decision of this court to avoid proliferation and convolution of the matter.

Before I pen down, I will state that pleadings normally are the gateway to accessing the Court. When well and diligently drafted they give a party longevity in sustaining a suit before a court of law. The pleadings by the applicants and the supporting documents are scanty and need to be re-looked at to avoid parties losing a matter due to poor draftsmanship. Counsel for the applicants should take note.

To me, the Giella test has not been achieved in this matter. The application dated 17th May 2023 is hereby dismissed with costs.

3. We have a similar application seeking substantially the same orders for an injunction. It is not an application for review as we know it. The only difference I can see is that the applicant contends he has a license to use the land. It was conferred to him by Chakama Ranching Limited, who swore an affidavit to that effect, the latter claiming that it is the title deed holder and that that title needs to be protected as provided under Article 40 of *the Constitution* on the right to own property and Section 26 of the *Land Registration Act* on indefeasibility of title:

“Certificate of title to be held as conclusive evidence of proprietorship. 26. (1) 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, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party or
- (b) where the certificate of title has been acquired illegally, unprocedurally, or through a corrupt scheme.”

4. I see a notice to withdraw the motion dated 17th May 2023 and amendments to introduce 3rd to 9th defendants. The record does not show whether this Court sanctioned this withdrawal and amendments.



5. The respondents consider the current application and the former similar. It is averred that the Court has already rendered its decision on the issue of interlocutory injunction and has no jurisdiction to reopen it. The Court significantly alluded to several parties claiming rights to use the land in contention in other pending suits. It is also alleged that the matter is being deliberated and considered by the National Land Commission under the Alternative Disputes Resolution Mechanism.
6. On the issue of whether this Court ought to investigate whether there are other matters in other forums, the applicants believe that doing so would amount to a fishing expedition by this Court and would not be well suited to do so.
7. Once again, the applicants are asking this Court to issue an interlocutory injunction. The parties cited authorities similar to those discussed in the former application on the issuance of injunctions generally.
8. I have considered the materials and submissions placed before me. The threshold to achieve before the grant of an injunction is as held in the *Giella v Cassman Brown* [1973] EA 358:

“The applicant should satisfy the Court that he has a prima facie case with a probability of success. Secondly, he stands to suffer irreparable loss or injury which cannot be compensated by damages and thirdly, if the Court is in doubt, it should decide on a balance of convenience.”
9. The first issue to determine then is whether the applicant has proved a prima facie case with the probability of success as held in *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 125 as follows:

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case.’ It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation in rebuttal from the latter.”
10. The principles stated in the *Giella* case are to be addressed sequentially as held in *Kenya Commercial Finance Company Ltd v Afraba Education Society* [2001] 1 EA 86 as cited in *Karen Bypass Estate Ltd v Print Avenue and Company Ltd* [2014] eKLR:

“so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt then the third condition can be addressed.”
11. In the former application, I dismissed the application for an injunction because:

“The land in question seems to have disputes pending before this court, pitting it (the applicant) with the Local Community. The Respondent also seems to have leased the land from inhabitants (the “Giryamas” on the ground). This warring interest will require a full deliberation and decision of this court to avoid proliferation and convolution of the matter.”
12. Nothing new has been brought forth. I do not know the applicant's intention of withdrawing an application I already dealt with on merit. I also see other defendants introduced in an amendment. This makes the proceedings quite untidy because the application's intended withdrawal was well after I ruled over the same issue, and the amendment did not breathe new life into the matter to warrant this Court revisiting its earlier ruling. Perhaps the entire suit should have been withdrawn and crafted afresh; Mr. Kiponda, for the respondent, was of that view.



13. I know the meaning and import of the indefeasibility of title doctrine and the need for its protection. However, the pendency of other suits and similar deliberations in other forums will affect the current suit. To avoid incongruent outcomes over the same issues, I believe the suit ought to be determined on merit to resolve the simmering battles on the ground.

14. The net effect is that the application dated 20th November 2023 is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 9TH DAY OF MAY 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Mayieka for the applicant.

Mr. Kiponda, for the respondents

Court Assistant: Happy

