



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO. 56 OF 2020**

**VINCENT KAZUNGU NGALA**

**RODGERS KARISA NGALA**

**ROBERT KADSITU NGALA.....PLAINTIFFS**

**VS**

**ZAWADI KAZUNGU RANDU**

**EMMANUEL KAZUNGU RANDU**

**KILIFI COUNTY LAND SURVEYOR.....DEFENDANTS**

**RULING**

This ruling is in respect of an application brought by way of Notice of Motion dated 20<sup>th</sup> July 2020 by the plaintiff/applicants seeking for the following orders:

*a) Spent*

*b) THAT pending hearing and determination of this application this Honourable Court may be pleased to issue an injunction order against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, their servants, agents, or anybody acting on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from interfering with the applicant parcel of land, being unregistered land at Koronja Area and compel the 3<sup>rd</sup> Respondent to show and mark the boundaries of the suit property herein.*

*c) THAT cost of this application be provided for.*

Counsel agreed to canvas the application vide written submissions of which the 1<sup>st</sup> and 2<sup>nd</sup> defendants complied while the plaintiff did not file any submissions.

Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendant opposed the application for injunction and submitted that the applicant has not met the threshold for grant of temporary injunctions as per the **Giella v Cassman Brown Co. Ltd 1973 E. A. 358.**

Counsel relied on the replying affidavit where the respondents averred that the property never belonged to the Plaintiffs father who was merely a caretaker of the property and after their father's death they took advantage of the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent were not in the area and started claiming ownership.

Ms Mwangi further submitted that the ownership dispute of the said parcel of land had been determined by Ujeri Alternative Dispute Resolution Committee who found that the land belonged to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants since the Plaintiffs failed to prove how they came into possession of the land.

Counsel therefore urged the court to dismiss the application with costs to the respondents.

### **ANALYSIS AND DETERMINATION**

The plaintiff filed this application for injunction but never filed submissions to canvas the application as was agreed by both counsel.

I notice that the supporting affidavit sworn by **Vincent Kazungu Ngala** is neither signed nor dated by the deponent. There is also no juror to show where it was prepared, dated and signed. This therefore does not qualify as an affidavit and it cannot be cured by Article 159 on the courts being obliged to ignore technicalities to administer justice.

This application cannot benefit from the provisions of Article 159 even if the court was to turn a blind eye to the errors and irregularities. In the case of **Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 6 Others [2013] eKLR** that:

*“I am not in the least persuaded that Article 159 of the Constitution and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.”*

Counsel attempted to amend the Notice of Motion by filing another one dated 27<sup>th</sup> May 2021 but the same is not proper before the court hence expunged from the court record. The application that was fixed for hearing is the one dated 20<sup>th</sup> July 2020 and not the amended one which the court has expunged from the court record.

I will not belabor much to go into the application which to me is nonexistent and a non-starter. There are many things that are not right with the application and the only order that the court can make is to dismiss it with costs to the respondents.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021.**

**M.A. ODENY**

**JUDGE**

***NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.***



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