



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL CASE 35 OF 2011**

**PATRICK MUBATSI NAMBIRO ..... 1<sup>ST</sup> PLAINTIFF/APPLICANT**

**PETER NAMBIRO MUBATSI ..... 2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**SOLOMON WATITWA MUNGONI ..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**MUNICIPAL COUNCIL OF MUMIAS ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**COMMISSIONER OF LANDS..... 3<sup>RD</sup> DEFENDANT/RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

The application by way of Chamber Summons dated 21.3.11 presently seeks for orders as follows:-

That there be a temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent, his agents, servants or any other person claiming on his behalf from entering into, interfering with in any manner with the plaintiffs' quiet use, occupation, use of the Mumias Town UNS. Comm. Plot No. 68, letter of allotment Ref. No.423/V/118 dated 15.6.1995 pending the hearing and determination of this suit. In the alternative, an order that the *status quo* be maintained pending hearing and determination of this suit.

The applications is based on the grounds stated in the body of the application and is supported by the affidavit of **PATRICK MUBATSI NAMBIRO**, the 1<sup>st</sup> applicant. In the said affidavit, it is averred that the 2<sup>nd</sup> applicant, **PETER NAMBIRO MUBATSI** was allocated Plot No. 68 in Mumias Town in the year 1962. That the plot was compulsorily acquired by the Government but was allocated again to the 2<sup>nd</sup> respondent 1995. That the said applicant developed the said plot by erecting a Commercial building in which stands a Posho Mill, office space e.t.c. That the 2<sup>nd</sup> applicant allowed his son, the 1<sup>st</sup> applicant to apply for the plot to be allocated to him. The plot was allocated to him and he paid the requisite charges and he continued paying rent, rates and other levies. That one **ALI GEORGE WANGARA**, an employee of the 2<sup>nd</sup> respondent, Municipal Council of Mumias allocated himself plot No. 69 then sold it to the 1<sup>st</sup> respondent, **SOLOMON WATITWA MUNGONI**. That the 1<sup>st</sup> respondent started fencing plot No. 69 and in the process fenced off part of the applicant's plot and delivered building materials to the site, prompting the ongoing dispute.

The application is opposed as per the replying affidavit sworn by the 1<sup>st</sup> respondent, **SOLOMON**

WATITWA MUNGONI on 18.5.11. The 2<sup>nd</sup> respondent also opposed the application as per the replying affidavit sworn by J. A. KUTEKHA, the Town Clerk.

The 1<sup>st</sup> respondent stated in his affidavit that his plot is No. 69 which he purchased from ALI GEORGE WANGARA for a consideration of Kshs.400,000/=. That he had the plot surveyed and transferred from the initial allottee to himself. That he paid all the transfer fees and obtained a title deed for the plot. He had building plans approved and began construction works on the plot. The 1<sup>st</sup> respondent asserted that he is building on his plot No. 69 and not on the applicant's plot No. 68 which is yet to be surveyed.

The 2<sup>nd</sup> respondent blames the applicants for violating the By-Laws and the Local Government Act and trying to put up un-approved structures which did not meet the required standards. The 2<sup>nd</sup> respondent saw the application by the applicants as unmeritorious. The 2<sup>nd</sup> respondent has not made any comment on the allegations made specifically against one Mr. GEORGE WANGARA who is said to be its employee. The 2<sup>nd</sup> respondent has also not shed any light on the actual position on the ground in respect of plot No. 68 and No. 69. The 2<sup>nd</sup> respondent has also not shed light on what steps he has taken against the applicants if they have violated any of its by-laws.

It is not denied that the 2<sup>nd</sup> respondent was allocated Plot No. 68. It is also not denied that the applicants have developed Plot No. 68 and is in occupation of the same. *Prima facie*, the applicants have established a case to warrant the issuance of a temporary order restraining the 1<sup>st</sup> respondent as prayed in prayer No. (b) of the application. However, the applicants have since the year 2004 commenced other suits which were never prosecuted to the conclusion as the cases ended prematurely without any determination being reached. Since there are building materials on Plot No. 69, I find it reasonable to order that the applicants do deposit security for any loss that may be suffered by the 1<sup>st</sup> respondent in the event that it turns out in the end that the order of injunction issued was not necessary. The applicants are hereby ordered to deposit security for the sum of Kshs.1,000,000/= within 30 days from the date hereof in default the orders issued herein to lapse.

*Delivered, dated and signed at Kakamega this 28<sup>th</sup> day of June, 2012*

**B. THURANIRA JADEN**  
**J U D G E**