



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**Civil Suit 622 of 2011**

**MOHAMMED SHEIKH HUSSEIN.....PLAINTIFF**

**VERSUS**

**CAPITAL CARS & TRUCKS LTD.....DEFENDANT/APPLICANT**

**RULING**

1. On the 10/11/11 the plaintiff in this suit filed a chamber summons applications together with the plaint dated 10/11/11 seeking orders of vacant possession. The chamber summons was brought under certificate of urgency. The defendant entered appearance through his counsel M/s Otieno Okeyo & Company Advocates on the 21/11/11. The plaintiff changed counsel on the 13/12/11. M/s Agimba & Associates filed a Notice of change of Advocates. M/s Agimba & Associates thereafter filed a notice of motion dated the 16/1/12 seeking 7 prayers amongst them were prayers to amend the plaint, that the defendant be stopped from doing any business in the property, that the defendant be evicted from the premises etc.
2. The defendant filed a defence dated the 14/12/2011 on the 2/3/12 together with another memorandum of appearance dated the 14/12/11. Thereafter the defendant filed the current notice of motion dated 8/3/11 seeking to have the plaintiff's entire suit and the application dated the 10/11/11 dismissed. The defendant also sought costs of the application and the suit. The application is brought under section 1A, 1B, 3, 3A and 6 of the Civil Procedure Act, and Order 51 Rules 1 and 3 of the Civil Procedure Rules 2010. To support the application there are six (6) grounds stated on the face of the application. The application was supported by the affidavit of Mr. Mehmood Rhemat Khan dated the 8/3/2012.
3. The Court record shows that when the plaintiff came to the Court on the 10/11/11 he was given a date for inter-partes hearing on the 21/11/11. On the 21/11/11 the matter was adjourned, parties were ordered to take a date for the application at the registry. The plaintiff took the 12/3/12 for inter-partes hearing of the application dated 10/11/11. On the 12/3/12 the parties were absent and the Court adjourned the application. The defendant thereafter took a date for the application dated 8/3/12. Though served the plaintiff/respondent did not attend nor did he file a replying affidavit.
4. The applicant contends in brief that on the 9/2/12 the plaintiff filed suit No. 624/12 in the Chief

Magistrates Court at Nairobi against the defendant /applicant. Mr. Mehmood Tariq who is also a director of the defendant/applicant herein and one Antony Njuguna who is unknown to the defendant/applicant. That in the said suit the plaintiff is seeking the same orders as the ones being sought in this suit. That the plaintiff also filed a similar application and used deceit and unlawful means to obtain an ex parte order and proceeded to use the police to evict the defendant/applicant from the suit premises. That the present suit therefore serves no purposes is an abuse of the Court process and should be dismissed with costs.

5.The applicant attached the plaint filed in CC 624/12 where the parties are Mohamed Sheikh Hussein as the plaintiff and the defendants are Mehmood Tariq the 1<sup>st</sup> defendant, Antony Njuguna 2<sup>nd</sup> defendant and Capital Truck Car Ltd 3<sup>rd</sup> defendant. In the plaint filed dated 10/11/11 the plaintiff claims at paragraph 3 that in the year 2008 he purchased the suit property Title No. Nairobi/block 37/37 from one Mohamed Abdi Guhad and the same was transferred into the plaintiff's name and registered thereafter a certificate of lease was issued on the 23/8/11. At paragraph 4 the plaintiff avers that he sought to take possession of the property since 2009 but he has been unable to do so as the defendant, his agents or servants have unlawfully entered the premises and are illegally operating a car garage within the said premises. At paragraph 7 he seeks an order of eviction of the defendant from his property. The plaintiff's prayers are for vacant possession.

6.The plaintiff did not prosecute his application to amend the plaint dated the 16/1/12. The plaint on record therefore is the one filed on the 10/11/11. MRK Exhibits the plaint filed in Civil suit No. 624/12 in the Chief Magistrates Court. The suit refers to the same suit property Nairobi Block 37/73 which is the subject of this suit. The certificate of lease attached to the plaint dated 10/11/11 refers to Nairobi/Block 37/73 in the name of Mohamed Sheikh Hussein although what is averred at paragraph 3 it is Nairobi/Block 37/37. He avers that he is the registered owner of the said suit property, he bought it and the defendant is occupying it illegally. (See paragraphs 4, 5,6). At paragraph 6 the plaintiff accuses the defendant of being trespassers and intruder mentions that he has sought vacant possession from the defendant who have refused and seeks vacant possession. In his prayers he seeks an order of eviction against the defendant.

7. From MRK I note that the applicant obtained orders as follows:-

1. That the defendants/respondents continued occupation of the plaintiff's premises known as NAIROBI/BLOCK 37/73 is unlawful and the same constitutes illegal trespass.
2. That an eviction order be and is hereby issued directed at the defendant/respondents, themselves, their servants, agents and or legal representatives ordering eviction of the defendants/applicants from the property NAIROBI/BLOCK 3773 situated at City Park, along Limuru Road, within Nairobi County in the republic of Kenya pending the hearing and determination of this application.
3. That the officer commanding station parklands police station do provide security in the enforcement of the order above.
4. That Siuma traders do evict the defendants as per the orders above
5. That an eviction order be and is hereby issued compelling the defendant/respondents, themselves, their servants, agents and or legal representatives to move out of the plaintiff's property known as NAIROBI/BLOCK 37/73/ pending the hearing and determination of this suit.

Attached to is a notice of motion by the defendant seeking a review of the said orders together with a supporting affidavit. It is not stated by the applicant whether the said application was heard. It is clear from what is attached that the plaintiff filed a suit in the lower Court similar to this one claiming the same orders. He has orders of eviction on record. One wonders why he filed this suit. The plaintiff went quiet after filing the suit and has failed to prosecute his 2applications. Obviously the plaintiff is up to mischief and this suit is an abuse of the Court process. I therefore find merit in the application dated the 8/3/12 and I dismiss the plaintiff's entire suit and application dated 10/11/11. The defendant/applicant is awarded costs of this application and the suit.

Orders accordingly.

**Dated, signed and delivered this 12th day of June 2012**

**R. OUGO**  
**JUDGE**

In the Presence of:-

..... For the Applicant

..... For the Respondent

..... Court Clerk