



1. KOTO PAMBA
2. AUGUSTINE PAMBA
3. KASSIM PAMBA
4. BENARD PAMBA
5. ESTHER PAMBA
6. MATHESTER PAMBA
7. ROSE PAMBA
8. LUVINA PAMBA
9. CHRISTINE PAMBA.....PLAINTIFFS/
APPLICANTS

VERSUS

DR. H.M MOHAMED.....DEFENDANT/
RESPONDENT

RULING

By a Chamber Summons application dated 27th October 2008, the Plaintiffs came before the Court seeking various orders. In particular they were seeking to restrain the Defendant by himself, his servants or agents or anybody working under his name from evicting the Plaintiffs, transferring or dealing with the subject matter which was a plot described as subdivision Number 734 Original Number 284/III/MN. The said application is anchored on two main grounds:

“a) THAT the Plaintiff/ Applicants have filed originating summons herein claiming adverse possession in respect of Plot subdivision Number 734 Original Number 284/III/MN”**

b) THAT the Defendant recently started to threaten the Plaintiffs with eviction and now are confirmed fears that the Defendant intends to sell the said piece of land to a neighbouring company trading under the name Umoja Rubber”.

The Plaintiff’s application was supported by the Affidavit of Koto Pamba Simon sworn on the 28 October 2008. The Affidavit in Paragraph 2 states that:

“THAT my late father Mr. Pamba Koto, lived on the Plot described as Subdivision Number 734 Original Number 284/III/MN as from year 1948”

At Paragraph 4 the Affidavit further states that:

“THAT in total therefore my siblings have resided on this particular land for a period not less than sixty (60) years”

The Affidavit further states at Paragraph six that the suit land was handed over to the late father by a lady whose name was Fatuma Al-Amin who has since died. The Plaintiffs further asserted that in recent times the defendant has harassed and demolished some of their homes and has used the police to forcefully evict them. The Affidavit further stated that the Defendant was in the process of selling the property to Umoja Rubber and annexed an affidavit of John Kiura Wilson an estate agent. Based on this grounds and

evidence they sought the said injunctive reliefs.

In response, the Defendant filed a Replying Affidavit dated 24th November 2008 *inter alia* stating that the Plaintiff do not have authority to file the suit and that Pamba Koto an employee was allowed to erect temporary building by his grandmother. The Defendant in the Affidavit further stated that his grandmother bought the suit premises in 1960/61 and that the current subject matter has been subject of Civil Suit in RMCC No. 694 of 2007(KLF). The Defendant also exhibited a certificate of title CR. 20314 issued on the 20th May 1990.

I have considered the Plaintiff's written submissions filed on the 29th January 2010 and the Defendants submissions filed on the 19 February 2010. It has been settled law for decades in East Africa that an injunction can only be granted after number of conditions is met by the applicant. In **Giella vs. Cassman Brown & Co. LTD [1973] EA 358** that an applicant for an injunctive must show:-

- a) *A prima facie case with a probability of success.*
- b) *An injunction will not be granted unless the applicant might otherwise suffer irreparable injury.*
- c) *When in doubt the court decide the application on the balance of convenience.*

At this stage, I am required to dispense with the Chamber Summon application for injunctive relief. The Defendant submitted that the Plaintiffs have not disclosed material facts to the court and this material non-disclosure precludes them from seeking injunctive relief. They further submitted that the Plaintiff has failed to disclose the existence of Civil RMCC No. 694 of 2007(KLF) between the 3rd and 4th Plaintiffs and the Defendants.

Having looked at the pleadings and submission, there is nothing to indicate that the said suit has been varied or discharged before the current suit was filed. By its nature an injunctive relief is equitable remedy and anyone seeking the favour of a court of equity must come with clean hands. The Plaintiffs have not in their Affidavit or pleadings explained to this court the nature and outcome of the proceedings in RMCC No. 694 of 2007(KLF). This is a material fact that should have been disclosed in the Supporting Affidavit. The Applicants failed to convince the court that they have prima facie case. They also failed to convince the court as to how damages will not be sufficient remedy.

In the circumstances, the Chamber Summons Application dated 27th October 2008 is dismissed with costs.

Dated AND Signed At Nairobi ON This 2ND Day Of AUGUST 2012.

M.K IBRAHIM
JUDGE

DATED AND Delivered At Mombasa on This 28TH Day Of AUGUST 2012.

J.W. MWERA
JUDGE

Delivered in the presence of:

Shimoka for Kadima for Defendant