



ABDULLAHI SHEIKH MOHAMED

JOHN MBURU IHUGU.....APPLICANTS

VERSUS

B. DAYALAL RAMJI.....RESPONDENT

RULING

Following my ruling of 28th June 2010 the applicants filed chamber summons dated 15th July 2010 seeking the following orders:

2. The order issued on the 28th June 2010 dismissing the Applicant's application dated 17th December 2009 be reviewed and/or set aside.

3. A temporary injunction be granted against the Respondent, his agents and or employees restraining them from dealing, selling, constructing or in any way interfering with Plot No. UNS B. C.R Plot D and Plot of Grant No. L.R 40488 both situated in Mariakani pending hearing and determination of this application.

The application is premised on the grounds that

- a) The Applicant's Amended Notice of Motion amended on 17th December 2009 was inadvertently overlooked/not considered in the ruling.**
- b) Since the orders for temporary stay were vacated there is real danger that the Respondent will pick up the construction of the wall on the Applicants plot.**
- c) The pending appeal will be rendered nugatory.**

The application is supported by the affidavit of Kipkurui Ng'eno Birir. The main contention of counsel is that that I did not consider the Amended Notice of Motion amended on 17th December 2009 and filed in court on 18th December 2009. The Amended notice of motion sought orders of temporary injunction against the Respondent (prayer 4). That this prayer was not considered by the Court.

Counsel for the Respondent filed a replying affidavit on 26th July 2010. He contends that the application is incompetent and fatally defective for failing to comply with the provisions of Order XLIV. That the Court ruled that the ruling appealed against would not render the appeal nugatory.

I have considered the application dated 15th July 2010 as well the rival submissions. I have perused the court record and I do not see any order granting leave to the Applicant to amend the notice of motion dated 14th December 2009. The Amended notice of motion was filed without leave and it is not properly before this court. I invoke the inherent power to prevent an abuse of the court process by expunging the

Amended Notice of Motion dated 18th December 2009 and filed on the same date.

The upshot is that the Chamber Summons dated 15th July 2010 and presented to court on the same date is left without legs and is hereby dismissed with costs as lacking merit. It is so ordered. Interim orders are discharged/vacated.

DATED AND SIGNED AT NAIROBI ON THIS 17TH DAY OF JULY 2012.

M. K IBRAHIM

JUDGE

DATED AND DELIVERED AT MOMBASA ON THIS 22ND DAY OF AUGUST 2012.

J.W.MWERA

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JUDGE

Delivered in the presence of: Both sides represented.