



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO.390 OF 2010**

**AMCON CONSTRUCTION LTD.....PLAINTIFF**

**VERSUS**

**PATRICK NJOROGE KIMITI.....1<sup>ST</sup> DEFENDANT**  
**KENNEDY OKEYO NGONDI.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

1. By a chamber summons dated 18<sup>th</sup> August, 2010, Amcon construction Ltd (hereinafter referred to as the plaintiff), seeks inter alia: a mandatory injunction compelling Patrick Njoroge Kimiti and Kennedy Okeyo Ngondi, (hereinafter referred to as 1<sup>st</sup> and 2<sup>nd</sup> defendants), to demolish an illegally erected fence on plot No.LR.209/12261 (hereinafter referred to as the suit property); and a temporary injunction restraining the defendants, their agents and or servants from trespassing and interfering with the plaintiff's peaceful occupation of the suit property or carrying out any construction or transaction on the suit property, pending the hearing and determination of the plaintiff's suit.
2. The plaintiff claims to be the legal owner of the suit property having purchased it from Stationery Supermarket Ltd. Although the transfer was duly registered, the plaintiff has had problems tracing the deed at the Land's registry. The plaintiff's attempts to develop the suit property have been frustrated by the defendant's agents who have roughed up the plaintiff's workers and confiscated the plaintiff's material and equipment.
3. On 29<sup>th</sup> July, 2010, the defendants through their agents commenced construction of a boundary wall on the suit property. The plaintiff's attempts to have its workers in the suit property on 3<sup>rd</sup> August, 2010 were violently resisted by a gang of hooligans acting on behalf of the defendants. The plaintiff's attempts to obtain assistance from the Police Commissioner have not been successful. The plaintiff therefore urges the court to grant the orders sought so as to restrain the defendants from continuing with their illegal construction on the suit premises or interfering with the plaintiff's access and enjoyment of the suit property. The plaintiff states that it is suffering irreparable loss and damage as a result of the defendant's actions.
4. The 2<sup>nd</sup> defendant swore an affidavit in response to the application. In the affidavit the 2<sup>nd</sup> respondent denied having any interest in the suit property or having passed himself off as one of the owners of the

suit property. The 2<sup>nd</sup> defendant has further denied having occupied the suit property, constructed on the suit property or in any way interfered with the suit property either personally or through anybody acting on his behalf. The 2<sup>nd</sup> defendant contends that the allegations made against him by the plaintiff are based on rumours and therefore no orders should be issued against him.

5. Although an advocate entered appearance for the 1<sup>st</sup> defendant, no reply to the application was filed, nor did the advocate attend court for the hearing of the application.

6. Having considered this application and the reply thereto, I find that the plaintiff has shown on a balance of probability that it is the proprietor of the suit property. The plaintiff has also demonstrated that its proprietary rights to the suit property have been infringed as the access to the suit property has been interfered with. The construction on the suit property without the plaintiff's authority by a person other than the plaintiff constitutes further infringement. The 1<sup>st</sup> defendant has not denied the plaintiff's allegation that it is the defendants who are responsible for such infringement.

7. Although the 2<sup>nd</sup> defendant has denied interfering with the suit property, the 2<sup>nd</sup> defendant has conceded that it has no interest in the suit property. In the light of the above. I am satisfied that there is sufficient evidence of infringement of the plaintiff's rights and that unless the court grants the orders sought, the plaintiff is likely to suffer irreparable loss. Furthermore, since the 2<sup>nd</sup> respondent has denied having any interest in the suit property no prejudice will be suffered by him if orders of interlocutory injunction are issued.

8. As regards the prayer for mandatory injunction compelling the defendants to demolish the illegally erected fence, I find that there is no compelling or special circumstances to justify the granting of the mandatory injunction at this stage. The illegally erected fence, though not sanctioned by the plaintiff, does not pose any immediate threat or interference with the plaintiff's enjoyment of the suit property as to justify its removal at this interlocutory stage.

9. In the circumstances, I allow the application dated 18<sup>th</sup> August, 2010 to the extent of issuing orders in terms of prayers (iv), (v) and (viii). To this extent only does the application succeed.

**Dated and delivered this 5<sup>th</sup> day of April, 2011**

**H. M. OKWENGU**  
**JUDGE**

In the presence of: -

Ms Kamende H/B for Saendi for the plaintiff

Eshuchi H/B for Okeyo for the 2<sup>nd</sup> defendant

B. Kosgei - Court clerk