



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 2247 OF 2007

MOHAN GALOT PLAINTIFF

VERSUS

**GANESHILAL PUSHARAM GALOT1ST
DEFENDANT**

PRAVIN GALOT2ND DEFENDANT

RAJESH GALOT3RD DEFENDANT

-CONSOLIDATED WITH CIVIL SUIT NO. 49 OF 2009-

PRAVIN GALOT 1ST DEFEDANT

RAJESH GALOT2ND DEFENDANT

GANESH GALOT 3RD DEFNDANT

KEVIN GALOT 4TH DEFENDANT

PRADEEP GALOT 5TH DEFENDAT

NARENDRA GALOT 6TH DEFENDANT

RULING

This is an application by the defendant in HCCC No. 49 of 2009 by way of Chamber Summons dated 16th February, 2010 under Order 39 Rules 1 and 2 of the Civil Procedure Rules and Section 3A of the Civil procedure act for the following substantive orders.

1. That a mandatory injunction be issued ordering the plaintiff, his employees, servants and or agents to remove all the barriers erected across the existing drive way and access road in property known as LR No. 7022/7 situate in Kiambu District.
2. That the temporary injunction be issues restraining the plaintiff by himself, his servants or agents from interfering in any manner whatsoever with the defendants quiet possession, enjoyment and right of access in the property known as LR 7022/7 situate in Kiambu pending the hearing of this suit.

The grounds upon which the said orders are sought are that

- a) The defendants and their families have resided on the suit property peacefully and continuously for the last 35 years.
- b) The plaintiff has continued interfering with the defendant's quiet possession, enjoyment and access to the suit property and may continue to do so unless restrained by way of injunction.
- c) The plaintiff has erected a barrier along the existing driveway which provides access to the 4th defendant.

The application supported by an affidavit sworn by Kelvin Galot. There is a replying affidavit sworn by the plaintiff Mohan Galot. Learned counsel for the parties have filed written submissions which I have noted. I note from the date of application to date is a period of about one and half years. The pleadings and the applications in this record centre on the rights of the parties in respect of the property known as LR NO. 7022/7 situate in Kiambu District aforesaid and which the plaintiff claims absolute proprietorship.

The defendant in this case claim interest thereon based on the fact that the plaintiff holds the same for himself and in trust for them. Any interlocutory applications cannot be addressed and determined without reference to the interests of the parties aforesaid. Indeed the issue of title occupies a central place in this emotive litigation and so I have considered the impact of my addressing this application Vis a vis the pleadings and come to the conclusion that this application cannot be decided without the risk of resultant injustice or prejudice to the parties before the full trial. I have noted the length of time that has gone by since this application was filed and had the parties been serious enough this suit would have been determined by addressing the issues in a full trial. I decline therefore to grant the orders sought and direct that the parties shall endeavor to take immediate steps to ensure that this suit is listed for hearing. Costs shall in the cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 6th day of October, 2011.

A. MBOGHOLI MSAGHA
JUDGE