



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

Civil Case 119 of 2007

ERASTUS WANYONYI KHAEMBA.....PLAINTIFF.

VERSUS

JOHN SIMIYU KIBERENGE

CHARLES WEFWAFWA

PATRICK WEKESA SITTI

JOSEPHAT AKHONYA

PASCAL KHISA BARASA

WEKESA NDINDIMU).....DEFENDANTS

R U L I N G.

By a chamber summons application, pursuant to Order XXXIX Rules 1, 2, 3 and 4 of the Civil Procedure rules, the applicant seeks orders:-

- (1) That service of this application be dispensed with in the first instance.
- (2) That a temporary injunction do issue by restraining the defendant/respondents, their servants and/or agents from trespassing upon, operating a dispensary and/or in any other way interfering with the plaintiff/applicants peaceful occupation, use and possession of a permanent house comprised of a servants quarter and a store situated on L.R. No. 7060/1 Trans Nzoia District pending the hearing and determination of this suit.
- (3) That pending inter-partes hearing prayer 2 be granted in the interim.
- (4) That costs be provided for.

The application is based on the grounds:-

- (a) **THAT**, the plaintiff/applicant is an innocent purchaser for value.

(b) **THAT**, the defendants have severally trespassed upon the property.

The application is predicated upon the affidavit of Erastus Wanyonyi Khaemba sworn on the 29th day of July, 2009.

The application was served upon the respondents who failed to file replying affidavit or grounds of opposition. On application, I granted leave to the applicant to proceed ex-parte.

On behalf of the applicant I was urged that on 12th November, 2002 three officials of **MESO CO-OPERATIVE SOCIETY** approached him to buy property known as L.R. 7060/1 Trans Nzoia District. Subsequently he entered into agreement of sale exhibited as “EWK” on 12th November, 2002. Upon being given a copy of the valuation of the subject property the applicant made part payment, on instructions of the respondent, to AFC in reduction of the outstanding arrears. Proof of payment is exhibited as “EWK 3”

After payment the applicant was given vacant possession and has been in occupation since then.

It came to pass that the respondents, who are some of the members of the Society claimed that the servant quarters of the subject premises was not sold along with the main premises and is a dispensary for the community.

On 21st July, 2009 a group of people led by the 1st and 2nd defendants rudely trespassed onto the subject premises, broke open the door to the servants quarters and proceeded to set up a dispensary and installed a clinical officer who embarked on his work immediately.

It is the applicant’s case that he is apprehensive that unless restrained by an order of this honourable court the defendants shall continue using the premises as a dispensary.

As I said earlier, the respondents were given ample time to respond to the application and squandered the opportunity. As such I have evidence in support of the application but now none in rebuttal. Accordingly, the applicant’s evidence stands unchallenged.

Accordingly, there shall be orders in terms of prayer 2 of the application. Costs shall be in the cause.

Dated and delivered at Kitale this 29th day of June 2010.

N.R.O. OMBIJA.

JUDGE.