



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 2300 of 2007

**HUTU MISTRY.....PLAINTIFF
VERSUS
PORUS PHIROZE MISTRY.....1ST DEFENDANT
MASARI FLATS LTD.....2ND DEFENDANT**

RULING

1. By a chamber summons dated 21st November, 2007, filed on the same day, Hutu Mistry (hereinafter referred to as the plaintiff), seeks orders as follows:

(i) Spent

(ii) Pending the hearing and determination of this application inter partes, this suit or until further orders, an order be issued restraining the 1st defendant whether by himself, agents, servants or otherwise howsoever from evicting the plaintiff, interfering with the plaintiff's quiet possession of, trespassing upon, advertising, offering for sale, leasing, mortgaging, charging, transferring or assigning and/or otherwise dealing with Flat No.4 erected on L.R.No.209/7124 Nairobi.

(iii) The Officer Commanding Police Station, Parklands Police Station be directed to assist in the enforcement of order 2 above.

(iv) The plaintiff be granted leave to serve the Originating Summons and Summons to Enter Appearance upon the 1st defendant through prepaid registered post to 13 Oxford Court 26 Avenue Elmers Surbiton Surrey KT6 4 SJ United Kingdom and/or P.O. Box 41721 Nairobi.

(v) The 1st defendant be ordered to enter appearance if he so wishes, within forty five (45) days of the date of registered postage of the service.

(vi) The costs of this application be provided for.

2. The plaintiff and the 1st defendant are siblings, while the suit property flat No.4 on LR No.209/7125 belongs to their mother. The mother died in the year 1982 leaving the premises in the possession of the plaintiff who has been in uninterrupted occupation for a period of over 25 years. The 1st defendant is now trying to take over possession of the suit property forcefully. The plaintiff claims that the 1st defendant's rights over the suit property were extinguished after the expiry of 12 years from the year 1982. The plaintiff therefore, prays for interlocutory order as he contends that should the 1st defendant take possession of the suit property the plaintiff would be prejudiced in his claim for adverse possession.

3. The 1st defendant filed a notice of preliminary objection to the plaintiff's originating summons and chamber summons. However, the preliminary objection was heard and overruled on 5th February, 2009. No further reply to the plaintiff's application was filed by the defendants nor did the defendants attend court for the hearing of the notice of motion dated 21st November, 2007.

4 I have considered the application and the submissions made before me on behalf of the plaintiff. The plaintiff's contention that he has been in uninterrupted possession of the suit premises since 1982 has not been challenged. The plaintiff's claim to adverse possession is hinged on his occupation of the suit premises. The plaintiff would therefore suffer undue prejudice if the order of injunction is not granted. In the circumstances, it is fair and just that an order of interlocutory injunction do issue restraining the 1st defendant from interfering with the plaintiff's occupation of the suit premises pending the hearing of this suit. I do not find it appropriate at this stage to invoke the assistance of the Police in a matter which is purely of a civil nature.

5. Accordingly I grant prayer No.(ii), No.(iv) (service on both addresses), and No.(v) of the application dated 21st November,

2007. Costs shall be in the cause.

Dated and delivered this 19th day of October, 2010

H. M. OKWENGU
JUDGE

In the presence of: -
Anzalla for the plaintiff
Advocate for the defendants absent
B. Kosgei - Court clerk