



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 142 OF 2010 (O.S)

**IN THE MATTER OF: - THE REGISTERED LANDS ACT (CAP. 300) LAWS OF KENYA
REGISTRATION OF TITLES ACT (CAP. 281)**

LAWS OF KENYA

AND

**IN THE MATTER OF: - FREEHOLD INTEREST IN PARCEL OF LAND/PLOT NUMBER
232/2/II/M.N CR. 18466**

AND

IN THE MATTER OF: - LIMITATION OF ACTION (CAP. 22) LAWS OF KENYA

BETWEEN

- 1. MOHAMED HAMISI BAMAMA**
- 2. SALMA KIBWANA**
- 3. ISAACK O. OBEYA**
- 4. KENGA KALUME KARISA**
- 5. JOHN YAA**

**(Suing on their own behalf and on behalf of other 204 residents of Plot No.
232/2/II/M.N).....PLAINTIFFS/APPLICANTS**

VERSUS

TRADE PLUS INTERNATIONAL

LTD.....DEFENDANT/RESPONDENT

RULING/ORDER

On the 22.10.2010 this court granted ex parte orders to the Plaintiffs/Applicants who are 209 in number and their families under the provisions of Order 39, rules 1, 2 and 3.

The Orders were of a temporary nature injuncting and restraining the Plaintiffs and their agents/servants from inter alia further evicting, demolishing, or interfering with the Plaintiffs or harassing them in respect of the suit premises.

On the 25.10.2010 the Defendants upon an application to set aside and/or review the Ex parte Orders; obtained Orders that the status quo on the ground on the suit premises as on 25.10.2010 at 3.30 pm shall be maintained and preserved by **ALL PARTIES** in the suit and any one claiming under them pending the inter-partes hearing on the ground. The court added that the parties shall respect and maintain the de facto position on the ground on the said date until the next hearing. The court directed that any party or other person who purports to change the existing position/situation on the said date shall be held in contempt of the court Order and will face the consequences thereof. The application was to be heard today on 4th November, 2010.

Today in the morning the court was filled up to capacity. There were tens of people, men, women and children.

In view of the fact that most of the people in court were the Plaintiffs or their families, I called out the matter to give it priority and also considering the public interest and nature of the subject matter and tension on the ground.

I gave the matter priority and reserved the application for 2.30 pm. I gave it high priority and blocked the entire after-noon for the application.

Both Advocates, Mr. Okanga and Mr. Garane had told the court they were ready to proceed.

Due to the said allocation half of the day was taken up. This forced the court to hear the other matters on the cause list in the morning and the court did not adjourn upto 2.00 pm.

The court then had a short break and the Resident Judge dealt with some administrative matters. The court resumed at 3.00 pm. When Mr. Okanga told the court that he had been served with a Notice of Change of Advocates after 2.30 pm by the firm of Munyao Muthama & Kashindi Advocates of Mombasa.

Mr. Okanga was visibly upset and appeared frustrated. He told the court of his surprise and the manner he was treated by the Plaintiffs. Mr. Jumbale said that he was instructed just a few hours earlier i.e. his firm and that he now applied for adjournment to enable him prepare for the application.

Mr. Garane for the defendants was also equally surprised and stated he was ready to proceed and that if the court granted any adjournment then as per Order 39, Rule 2A (2) the ex parte Order could not be extended.

This court is taken aback by the turn of events. The Plaintiffs did not disclose that they intended to remove their Advocate Mr. Okanga in the morning. They were full in court and appeared to be all geared up to proceed. The matter had come under certificate of urgency.

It is clear that the court has been taken for granted and many other litigants had their matters taken out due to this case and lost their opportunity to have judicial attention and have their day in court.

There was no forewarning in the morning whatsoever. This court cannot force any party to choose his Advocate. It is their constitutional right to change advocates and be represented by an advocate of their choice. But the change and exercise of the right must not be done in a way that prejudices the expedition of matters and to the other party. If the application does not proceed then the Defendant will certainly be prejudiced and their rights compromised since they are aggrieved by the ex parte Orders and even claim that it is being used by the Plaintiffs who have been evicted to return to the premises and put up new structures.

The court condemns the Plaintiffs for their conduct today. They had the opportunity to change lawyers from 22.10.2010. The court sympathises with the counsel who put in some energy, commitment and industry in the case for the Plaintiffs only to be unceremoniously removed. I will leave it at that.

I hereby do allow the adjournment sought by the Plaintiffs' new counsel. This clearly now removes the matter from the "**red alert**" matters under certificate as the Plaintiffs are not acting in good faith and fairly to the other party.

The matter is taken out and the two applications shall be fixed for hearing on their merits on a date to be mutually agreed upon and convenient to the court.

The court diary for this year is now full and all matters are awaiting the opening of the diary for 2011. I will give directions in court with regard to the new date. I therefore make the following Orders: -

1. The two applications are hereby stood over to be set down for hearing on a date to be agreed upon mutually and subject to the court diary.
2. The date may be fixed in court or at the registry.
3. The Orders of this court granted on 22.10.2010 are here varied and the following Orders are made in substitution thereof: -

(i) The Orders granted to the Defendants and made by the court on 25th October, 2010 are here **REITERATED, RE-ISSUED AND/OR EXTENDED**. The full Order shall be incorporated in the Orders herein.

(ii) For the **AVOIDANCE OF DOUBT**, the Orders of 22nd October, 2010 stand **DISCHARGED AND REPLACED WITH THE ORDER OF 25TH OCTOBER, 2010**.

(iii) The effect and meaning are that: -

(a) The Defendants are and have been restrained from carrying out any evictions or demolitions on the suit property with effect from 22nd October, 2010.

(b) Any Plaintiff who was evicted and whose premises had been demolished by 22nd October, 2010 shall **NOT** purport to use or apply the court Orders of 22nd October, 2010 on any other date to re-enter, or to return in the suit premises or build, erect or put up any new structures, buildings or developments.

(c) The status quo prevailing on the ground on the suit premises on 25.10.2010 at 3.30 pm shall be maintained and preserved by **ALL PARTIES** in the suit and any one claiming under then pending further Orders of this court.

(iv) **IN ORDER TO MAINTAIN PEACE SECURITY AND ENFORCEMENT OF THE LAW**, I hereby **ORDER AND DIRECT**, the O.I.C. of the nearest Police Station to the suit premises and the O.C.P.D. of the Area to ensure that **THIS ORDER IS OBEYED AND COMPLIED WITH** and that there shall be no breach of the peace. There shall be no new erections or buildings of the suit premises whatsoever.

Orders accordingly.

M.K. IBRAHIM

JUDGE

4.11.2010

FURTHER ORDER

“BY CONSENT – The parties shall file and serve written submissions within the **NEXT 14 DAYS**”. Highlighting shall be on the 19.11.2010 at 11.00 am.

Dated and delivered at Mombasa this 4th day of November 2010.

**M.K. IBRAHIM
JUDGE**