



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO.425 OF 2010**

**BISHOP PAUL YOWAKIM.....APPLICANT**  
**VERSUS**  
**ITOGA INVESTMENTS HOLDING LTD..... RESPONDENT**

**RULING**

1. On 29<sup>th</sup> October, 2010, I dismissed a chamber summons dated 17<sup>th</sup> September, 2010 in which the plaintiff/applicant sought an order of interlocutory injunction pending the hearing of the suit that he had filed against the defendant/respondent. Counsel for the applicant then made an oral application for an order of interlocutory injunction pending the hearing of an appeal which the applicant intended to file against my ruling.
2. In support of his oral application counsel for the applicant relied on two authorities i.e.
  - *Erinford Properties Ltd vs Cheshire County Council [1974] 2 All ER 448.*
  - *Madhupaper International Ltd vs Kerr [1985] KLR 840.*
3. Counsel urged the court that given the history of the matter before it, it was necessary for the court to give the order of interlocutory injunction in order to preserve the subject matter of litigation so that the intended appeal is not rendered nugatory.
4. Counsel for the respondent objected to the application contending that there was no basis for the court to issue the orders sought.
5. I have carefully considered the application and also perused the two authorities which were cited. I do appreciate that notwithstanding the dismissal of the chamber summons dated 17<sup>th</sup> September, 2010, I do have jurisdiction to grant the order sought of interlocutory injunction pending appeal against the dismissal of the applicant's chamber summons. As stated in the authorities referred to, the purpose of granting such an order would be to prevent the decision of the Court of Appeal from being rendered nugatory, should it allow the appeal.
6. Nonetheless, this court can only grant such an application where it is of the opinion that the intended appeal is not frivolous. In this case, having found that the applicant's suit is an abuse of the process of the court, it will not be appropriate to anchor an order of interlocutory injunction pending appeal upon such a suit, because if the suit is an abuse of the process of the court, the appeal can only be frivolous. Moreover, this court notes that the applicant had the opportunity to pursue an order of interlocutory injunction pending appeal in the Court of Appeal. That option has however not been pursued. If the applicant's appeal is rendered nugatory by the failure of this court to grant the order of interlocutory injunction pending appeal, the applicant will only have himself to blame.
7. For the above reasons, I decline to issue an order of temporary injunction pending appeal.

**Dated and delivered this 2<sup>nd</sup> day of November, 2010**

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

In the presence of: -  
Mureithi for the applicant  
Ms Kinyua for the respondent  
B. Kosgei - Court clerk