



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO.339 OF 2010**

**RAMOKIA HOUSING COOPERATIVE SOCIETY  
LTD.....PLAINTIFF**

**VERSUS**

**GEORGE KURIA MWAURA.....1<sup>ST</sup>  
DEFENDANT**

**KIMANI KAHUHU.....2<sup>ND</sup>  
DEFENDANT**

**ARTHER K. WAWERU, ANTONY K.**

**NJUGUNA AND SAMWEL M. MUNGAI**

**(as Trustees Of Mt Hebron Self Help Group).....3<sup>RD</sup>  
DEFENDANT**

**R U L I N G**

1. By a chamber summons dated 11<sup>th</sup> October, 2010, the applicant Ramokia Housing Cooperative Society Ltd, seeks orders of interlocutory injunction, under Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act. The respondents have raised a preliminary objection to the hearing of the application. As per the notice of the preliminary objection filed by the respondents on 26<sup>th</sup> October, 2010, the grounds raised are as follows:

- (i) That the 3<sup>rd</sup> defendant/respondent was enjoined in the suit without formal leave of the honourable court as per practice and law required under the Civil Procedure rules which have offended

the provisions therein.

(ii) That the said chamber summons and the entire suit as a whole is fatally and incurably defective as the injunctive orders sought are incapable of being granted reason being that it offends the provisions of Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules.

(iii) That the plaintiff/applicant has filed a multiple of same applications similar in nature seeking same orders which is contrary to laid down practice and jurisprudence.

(iv) That the aforesaid application and the entire suit as a whole raises no cause of action against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents.

(v) That there is a misjoinder of adding the 3<sup>rd</sup> defendant/respondent as party to this suit.

(vi) That the plaintiff/respondent lacks locus standi and/or capacity to sue the 3<sup>rd</sup> defendant/respondent.

(vii) That the injunctive orders sought against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents have been overtaken by events as the suit property has already been transferred to a third party.

(viii) That the plaintiff/applicant is infringing on the Constitutional rights of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants by failing to serve upon summons to enter appearance as per order IV of the Civil Procedure Rules to enable filing of defences. The tenets of natural justice dictate that one cannot be condemned unheard.

(ix) That the aforesaid chamber summons and the entire suit as a whole is vexatious, frivolous and an abuse of the court process.

2. Counsel for the respondents has argued that the 3<sup>rd</sup> respondent was not properly enjoined in the suit as no leave was obtained from the court. It is further contended that the orders sought are incapable of being granted because neither the 1<sup>st</sup>, nor the 2<sup>nd</sup>, or the 3<sup>rd</sup> respondents are in control of the suit premises. It is maintained that the orders sought have been overtaken by events as the 3<sup>rd</sup> respondent bought the suit premises. It is submitted that the application before the court is vexatious, and should be dismissed.

3. In response to the preliminary objection, counsel for the applicant maintains that the 3<sup>rd</sup> respondent has been properly enjoined in the suit, as the pleadings have not been closed. It is submitted that the 1<sup>st</sup> and 2<sup>nd</sup> respondents having transferred the suit premises to the 3<sup>rd</sup> respondent, the applicant's suit is properly before the court. It was argued that the interim orders sought are necessary as the suit property can change hands unless the order sought is given. It was pointed out that the 1<sup>st</sup> application filed by the applicant was abandoned.

4. I have given due consideration to this application. I have also perused the court record. The applicant filed this suit against the 1<sup>st</sup> and 2<sup>nd</sup> respondents on 14<sup>th</sup> July, 2010. Filed simultaneously with

the suit was an application for interlocutory injunction under Order XXXIX of the Civil Procedure Rules. On 14<sup>th</sup> July, 2010, the application was certified urgent and the applicant ordered to serve the application for inter parte hearing. On 19<sup>th</sup> July, 2010 a consent order was recorded for the status quo to be maintained. The respondents was given fourteen days within which to file a replying affidavit. The application was adjourned to 29<sup>th</sup> September, 2010 for hearing. On 3<sup>rd</sup> August, the 1<sup>st</sup> respondent filed a replying affidavit. Following the filing of the replying affidavit, the applicant filed an amended plaint on 23<sup>rd</sup> September, 2010 in which he included other parties. These were, Arthur K. Waweru, Anthony K. Njuguna and Samuel M. Mungai as Trustees of Mt. Hebron Self Help Group, who were brought in as 3<sup>rd</sup> defendants. On 12<sup>th</sup> October, 2010, the applicant filed the chamber summons dated 11<sup>th</sup> October, 2010 which is subject of the preliminary objection.

5. It is evident from the above that the chamber summons filed on 14<sup>th</sup> July, 2010, which seeks similar orders as the current application, still remains on record. Although the applicant's counsel submitted that the application was abandoned, there is nothing on record to confirm that allegation. In the circumstances, the current application is an abuse of the process of the court. As regards the joining of the 3<sup>rd</sup> defendants to the suit, it is evident that the same was done without leave of the court. Nevertheless, pleadings had not been closed and the applicant was entitled to amend the plaint without leave of the court. I would therefore overrule the preliminary objection on that ground.

6. There are several issues which have been raised. Such issues include, locus standi of the applicant, the cause of action against the respondents, and the allegation that the application before the court has been overtaken by events as the suit property has already been transferred to a 3<sup>rd</sup> party. All these issues are issues which cannot be determined on the pleadings. They are contentious issues which require evidence. They are not therefore issues that can be dealt with by way of preliminary objection.

7. The upshot of the above is that I will only uphold the preliminary objection on one ground. That is that there is another application pending before this court which raises the same issues as the current application. For that reason, the preliminary objection is upheld and the chamber summons dated 11<sup>th</sup> October, 2010, is struck out.

Those shall be the orders of this court.

**Dated and delivered this 6<sup>th</sup> day of December, 2010**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Advocate for the plaintiff/applicant absent

Representatives of applicant present

Langat for the defendants/respondents

B. Kosei - Court clerk