



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

Civil Suit 163 of 2009

BARRACK OPIYO OKUMU1ST PLAINTIFF

MILTON OCHIENG ODHIAMBO 2ND PLAINTIFF

COLLINS ANYANGO OKODE 3RD PLAINTIFF

MARTHA NJERI GITAU 4TH PLAINTIFF

JOHN OCHIENG OTIENO 5TH PLAINTIFF

DONALD WAFULA ADENYA 6TH PLAINTIFF

RONALD OKOTH ARUM7TH PLAINTIFF

VERSUS

SAMUEL MURAGE 1ST DEFENDANT

MAMUKA VALUERS (MANAGEMENT) LTD.... 2ND DEFENDANT

RULING

Before the court is a Chamber summons dated 30th March, 2009 by the Plaintiffs. The said application is brought under the Provisions of Order XXXIX Rule 1 & 2 of the Civil Procedure Rules, Section 63 (c) and 3A of the Civil Procedure Act. It is supported by the affidavit of *Barack Opiyo Okumu* the 1st Plaintiff who has been duly authorized to swear the same by his co-Plaintiffs.

The application is seeking for the following substantive orders that:-

“ (a) A temporary injunction be and is hereby issued in favour of the Plaintiffs against the Defendants restraining the Defendants, their agents and/or servants from evicting the Plaintiffs from the suit premises being L. R. No.209/9685 Huruma Estate Shopping Centre, Nairobi pending the hearing and final disposal of this application and suit.

(b) Costs of this application be borne by the Defendants.”

The Defendants are opposing the application and have filed a replying affidavit sworn by the 1st Defendant *Mr. Samuel Murage*. The affidavit is dated 6th April, 2009.

The Plaintiffs contend that they are controlled tenants under Cap 301. The Plaintiffs have been tenants in the 1st Defendant’s premises for several years. That the 2nd Defendant issued them with illegal notices on behalf of the 1st Defendant requiring them to vacate the premises within 30 days. The notices were to run from 13th March, 2009 to 15th

April, 2009. The Plaintiff came to court under certificate of urgency fearing eviction & demolition of the suit premises.

The 1st Defendant states that he is registered as the owner of the suit premises together with his wife Esther Murage. He disputes that the Plaintiffs are his tenants. He contends that the Defendants are mere licensees who have erected illegal structures on their property. That they require the premises for construction. He contends that the notices are valid and that his court has no jurisdiction to handle this matter in his submission on the 10th June, 2009 counsel for the Defendant, indicated to the court that he did not object to the application but did not concede to the payment.

Having considered the submission before me and the pleading, it is clear that this matter is properly before the court. As counsel for the Respondent did not object to the application I need not address the issues herein any further, save for the issue of costs.

Section 27(1) provides that costs of any action, cause or other matter shall follow the event unless for good reason or the Judge orders otherwise. I see no reason why the costs should not follow the event herein.

Having arrived at the conclusion above, I grant orders (a) and (b) prayed in the Chamber Summons filed and dated 30th March, 2009.

Dated and delivered at Nairobi this 1st day of July, 2009.

ALI- ARONI

JUDGE