



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT 620 OF 2008

GEORGE KURIA MWAURA PLAINTIFF

VERSUS

SOLOMON GICHINA MWANGI DEFENDANT

RULING

The application before the court is a Chamber Summons dated 22nd December, 2008, by the Applicant/Plaintiff. The said Application is brought under section 3A of the Civil Procedure Act and Order XXXIX Rule 1(a) Order 2 and 9 of the Civil Procedure Rules. It is supported by an Affidavit and a Supplementary Affidavit both sworn by **George Kuria Mwaura** the Plaintiff/Applicant.

The application is seeking for orders:-

1. That this Application be certified as urgent and same be heard during the vacation.
2. That pending the hearing and determination of this application
 - (a) The defendant be restrained whether by himself, his officers, servants or agents from selling whether by private treaty or public auction or advertising for sale or otherwise howsoever alienating or dealing in any manner whatsoever or interfering with the Plaintiff's ownership, quiet possession and enjoyment of his property known as L.R. No. Thika Block 9/61.
- (3) That pending the hearing and final determination of this suit -
 - (a) The Defendant be restrained whether by himself, his officers servants or agents from selling whether by private treaty or dealing in any manner whatsoever or interfering with the Plaintiffs ownership, quiet possession and enjoyment of his property known as L.R. No. Thika Block 9/61.
 - (b) Costs of this application be provided for.

The Plaintiff/Applicant claims to be the rightful owner of the suit premises, having been allocated the same by the Commissioner of lands on 16th June, 2008. He has a title issued on the 9th November, 2008. He accuses the Defendant/Respondent of having illegally erected a fence on the said property.

The defendant on his part filed a Replying Affidavit in opposition stating that he does not intend to sell, alienating and in any manner interfering with the suit premises. He states further that his interest is on L.R. No.4953/1943. The defendant is registered as Grantee of L. R NO. 4953/1949 and was issued with a title on 16th June, 1999.

Prayers 1 and 2 of the application have been taken over by events. What is left for the courts consideration is prayers 3 (a) and (b).

I have considered the pleadings and the submissions by both counsels. It is clear from the various Affidavits that there are triable issues before the Court regarding the suit premises. Various documents, plans, titles etc, have been annexed to the pleadings by both parties. Both parties appear to refer to one and the same property but each subscribing a different title number to the same. Indeed each has a title. It is difficult at this stage to determine who of the two litigants has a genuine claim to the subject matter of this suit. This matter that can only be exhaustively ventilated at a full trial. It is necessary, in my view that, the Land subject matter herein be preserved pending full determination of this suit. I will therefore allow the Plaintiff's application in terms of prayer 3(a) of the Chamber Summons dated 22nd December, 2008. I will make no order as to costs at this stage.

Dated and delivered this 9th June, 2009.

ALI- ARONI

JUDGE