

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 296 of 2009

EDWARD WACHIURI NJOROGE..... PLAINTIFF

VERSUS

KENYA PLANTERS CO-OPERATIVE UNION LTD.....DEFENDANT

RULING

Having carefully considered what was brought before me by parties in this suit in connection with the Plaintiff's Chamber Summons dated 4th June 2006, the said Chamber Summons be and is hereby dismissed with costs to the Defendant/Respondent for the following reasons:-

Firstly, the parties addressed me in their submissions as if the Chamber Summons aforesaid was an application for an injunction under Order XXIX of the Civil Procedure Rules when that application is not for an injunction.

Secondly, the parties did not appreciate the difference between a prohibitory order purported prayed for in prayer c) and an injunction.

Thirdly the parties did not care to know that an application under Order XXX VIII is different from an application under Order XXXIX of the Civil Procedure Rules and that once there are clear, and specific provisions of the law governing an issue, a party is not entitled to confuse the matter by bringing in section 3A of the Civil procedure Act and or reverting to vague terms like

“and all other enabling sections of the law.”

Fourthly though the Chamber Summons is said brought under Order XXXVIII Rule 1 (b) of the Civil Procedure Rules, no attempt has been made to show that, the Defendant, a body corporate established under the Co-operatives Act and the Companies Act in this Country, is about to leave this country under circumstances affording reasonable probability that the Plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the Defendant in this suit.

Fifthly, neither an injunction nor a prohibitory order or attachment is provided for under Order XXXIII Rule 1 (b) of the Civil Procedure Rules and therefore Chamber Summons dated 4th June 2009 is praying for orders not lawfully grantable under those provisions of the law.

Sixthly there may be no dispute in this suit as to who owns L.R. No.209/4361/22 – 26 but failure by the Plaintiff to exhibit any official document proving the holder of title to that property and revealing the statute under which that title is held is fatal to the Plaintiff's prayers in the Chamber Summons.

There may be more reasons for dismissing this Chamber Summons but presently the aforementioned reasons are sufficient for that purpose.

Dated this 17th day of July 2009.

J.M. KHAMONI

JUDGE

Mr. Kamau Kinga for the Plaintiff/Applicant

Mr. Moya for the Defendant/Respondent