

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA Civil Case 130 of 2009

SAID SALIM MOHAMED.....PLAINTIFF

VERSUS

ACIL LIMITED.....DEFENDANT

RULING

Before this court is the Applicant's Chamber Summons dated 6th May 2009 in which he seeks inter alia the following orders:-

- “2. *THAT a temporary injunction do issue against the defendant itself, its agents and/or servants and/or employees from constructing a building along the road leading to Plot Number II MN/645 or doing anything detrimental to the plaintiff's interest and/or rights over the said road pending the hearing and final determination of this suit.*
3. *THAT the construction built by the Respondent on said road reserve be demolished”.*

The application was opposed and the Respondent filed their replying affidavit on 21st May 2009. Mr. Owino appeared on behalf of the Applicant whilst Mr. Bryant did appear on behalf of the Respondent. Arguments were made by way of oral submissions in court.

At the centre of the dispute is the construction being carried out by the Respondent on its plot, subdivision number 348, section II, Mainland North (hereinafter referred to as “Plot No. 348”). The Applicant in his supporting affidavit dated 6/05/2009 states that this construction is encroaching on a road and thereby causes an obstruction to his access to his own farm on plot No.II/MN/645 (hereinafter referred to as “Plot No. 645”. At this point I am not engaged in determining the merits or demerits of the Plaintiff's suit. At this point the Plaintiff/Applicant is merely seeking interim interlocutory orders. The principles forming the basis for an award of interlocutory orders were very clearly and succinctly enunciated in the celebrated case of Giella –vs- Cassman Brown [1973] E.A. 358. In coming to a decision on this application I will be guided by this precedent. I have listened to the submissions of learned counsel and I have carefully perused and considered the annexures thereto. I am convinced that the Applicants have made out a prima facie case. I am equally convinced that the interests of justice would best be served at this stage by maintaining the status quo. Certain pertinent decisions may only be reached upon hearing evidence adduced at the full hearing of the suit. For the above reasons I do hereby allow this present application in terms of prayer (2) thereof. Prayer (3) is hereby disallowed. These orders to remain in force pending the hearing and final determination of the main suit. Costs in the cause.

Dated and Delivered at Mombasa this 15th day of October 2009.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Owino for Applicant

Mr. Gathuku holding brief for Mr. Bryant for Defendant

M. ODERO

JUDGE

15/10/2009