



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KITALE**  
**Civil Suit 2 of 2008**

**JOHNAI OKUTOI**

**PEGGY CHRISTINE OKUTOI =====PLAINTIFFS/APPLICANTS**

**V E R S U S**

**NAJIB JIWA**

**STANDARD CHARTERED BANK (K) LTD**

**S. MBUTHIA =====DEFENDANTS/RESPONDENTS**

**R U L I N G**

On 9<sup>th</sup> January 2008 my learned brother the Hon. Ibrahim J. granted a temporary injunction in favour of the plaintiffs. By that order, the 1<sup>st</sup> defendant, or his servants or agents were restrained from registering himself as the proprietor of **L.R. NO.KITALE MUNICIPALITY/BLOCK 4/462**, and from interfering with the plaintiffs' peaceful possession and use of the said property.

Those orders were to remain in force until 21/1/2008, when the application dated 8/1/2008 was scheduled to be heard inter partes.

Meanwhile, on 17/1/2008, the 1<sup>st</sup> defendant filed an application under a certificate of urgency. Through that application, (which is dated 17/1/2008) the 1<sup>st</sup> defendant sought an injunction to restrain the plaintiffs from entering onto the suit property, or from reconstructing it, or from dealing in any way with the said property.

When the 1<sup>st</sup> defendant's application first came up in court, it was certified urgent, and the court directed that it be heard inter partes on 21/1/2008.

By that date, I had been notified by the Hon. Chief Justice of the Republic of Kenya, that with effect from 4/2/2008, I would be sitting at the High Court in Kakamega. In the circumstances, both sides to the case before me appreciated that it would not be possible for me to hear and determine the two applications before taking up my new posting. Accordingly, the question that the parties wished me to address is how best to preserve the subject matter of the dispute between them, until such time as my successor would be in a position to hear and determine the two applications.

The plaintiffs asked me to extend the interim injunction which was already in force. Their reason for so saying is that they have always been in occupation of the suit property, notwithstanding the 1<sup>st</sup> defendant's contention that he had bought the property at an auction conducted on 12/8/1998.

As far as I can see, the parties are in agreement about the fact that the plaintiffs were carrying on business on the suit property until 17/12/2007, when the premises was gutted down by fire.

The parties also seem to be in agreement that subsequent to the fire, the plaintiffs commenced reconstruction of the buildings.

The 1<sup>st</sup> defendant wishes to have the plaintiffs stopped from reconstructing the building. That is one of the substantive reliefs sought by the 1<sup>st</sup> defendant.

Until the two applications are determined by the court, the 1<sup>st</sup> defendant is ready to keep-off the property. But he asks that the plaintiffs should also keep-off, because any further reconstruction of the buildings would prejudice the 1<sup>st</sup> defendant. It is his view that should the reconstruction proceed, the same would have to be brought down, in the event that his case were to ultimately succeed.

Meanwhile, he also expressed the view that the ongoing reconstruction was dangerous as the plaintiffs did not first bring down the walls which had been left standing, after the fire. Those walls are alleged to be weak, and thus dangerous.

In this ruling, I do remind myself that neither the plaintiffs' nor the 1<sup>st</sup> defendant's applications have yet been canvassed. Therefore, my only responsibility to give such interim orders as would be in the interests of justice until the Judge who will be presiding over the case is in a position to give further orders. In other words, such orders as I may give at this stage may readily be set aside by my successor.

In the circumstances, I decline to analyze some of the substantive submissions made by the parties, because I hold the considered view that anything which I might say would be premature. But, at the same time, this court cannot just throw up its hands in the air, and leave the parties rudderless.

The plaintiffs appreciate that they could end up losing the case. Yet, they are ready to spend money in reconstructing the building. If they were to spend money on a building that is ultimately brought down, that would be their loss.

And, if the building had to be brought down, the court may well give appropriate orders as to the person who should be responsible for the costs thereof.

Meanwhile, if the plaintiffs do not comply with the requisite bye-laws, as the security or otherwise, I believe that it is they who would be liable.

In the result, the interim orders dated 8/1/2008 are extended until further orders of this court. And the two applications dated 8/1/2008 and 17/1/2008 are listed for hearing inter partes on 18<sup>th</sup> of February 2008.

Dated, Signed and Delivered at Kitale, this 28<sup>th</sup> day of January, 2008.

**FRED A. OCHIENG**

**JUDGE**