



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL  
COURTS)**

**CIVIL SUIT 93 OF 2008**

**ASHISH MAGON.....1<sup>ST</sup> PLAINTIFF**

**TRIKUTI INVESTMENT LTD.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**HATARI SECURITY LIMITED .....DEFENDANT**

**R U L I N G**

This Chamber Summons has been brought by the Plaintiffs under order XXXIX Rules 1 & 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It seeks the following principal orders:-

***“The Defendant and its agents be restrained against barring the 1<sup>st</sup> Plaintiff entry into the premises known as Muguga Green L. R. NO. 1870/111/420 pending the hearing and determination of the instant suit.”***

The application is supported by the affidavit of ASHISH MAGON sworn on the 4<sup>th</sup> March 2008 wherein he depones that he is one of the directors of the 2<sup>nd</sup> Plaintiff. The application is based on the grounds that the said Ashish Magon is a director and shareholder of Trikuti Investments Ltd who is the registered owner of Muguga Green LR NO. 1870/111/420 and that the Defendant is illegally barring Ashish Magon from entry to the suit premises.

The application was brought under a certificate of urgency and the same was ordered to be served and to be heard inter partes on 2<sup>nd</sup> April 2008. There is on record an Affidavit of Service dated 01/04/2008 stating that service was effected on the Defendant/Respondent on 10<sup>th</sup> March 2008.

On the date scheduled for the hearing of the application inter partes only the plaintiff’s counsel appeared in court. The application therefore proceeded unopposed. In the Plaint filed on 22<sup>nd</sup> February 2008 the 1<sup>st</sup> Plaintiff claims to be one of two directors of the 2<sup>nd</sup> Plaintiff herein. The 2<sup>nd</sup> Plaintiff is said to be the registered proprietor of the suit property. It is further pleaded in the said Plaint that the Defendant be restrained against barring the access of the 1<sup>st</sup> Plaintiff to the suit land as the 1<sup>st</sup> plaintiff has an interest of ownership thereof.

The Affidavit in support of the application also states that the 1<sup>st</sup> plaintiff is a director of the 2<sup>nd</sup> plaintiff and the suit property is registered in the name of the 2<sup>nd</sup> Plaintiff. In it the 1<sup>st</sup> Plaintiff depones that the other director of the 2<sup>nd</sup> Defendant has assured him on various occasions that she has not instructed the Defendant to bar the 1<sup>st</sup> Plaintiff from access to the suit property. He depones further that without any authority or colour of right the Defendant has severally barred the 1<sup>st</sup> plaintiff from accessing the property in issue and that such act is illegal and seeks the orders sought.

The application is not opposed and the averments and submissions remain uncontraverted. In the absence of any answer to the pleadings herein the court is left to consider what is on record on behalf of the plaintiff. The Defendant is said to have been hired by the Plaintiff to guard their premises. They are

not said to claim any ownership of the premises. The plaintiff claims to have terminated their services yet they refuse to cease guarding the premises. The suit premises are said to be going to waste as they remain vacant and no rent can be gained therefrom. The Plaintiffs, on the pleadings and submissions before the court have satisfied the court that they have a right that is being breached and which right requires the Court's protection. The upshot of the above is that the application dated 04/04/08 is successful and the Defendant and its agents are accordingly restrained against barring the 1<sup>st</sup> plaintiff's entry into the premises known as Muguga Green LR. No. 1870/111/420 pending the hearing and determination of the suit. The plaintiffs are also awarded the costs of the application.

DATED and DELIVERED in open court in NAIROBI this **17<sup>th</sup>** day of **April 2008**.

In the presence of

H. Mwendwa for the Applicant.

**P. M. MWILU**

**JUDGE**

**17.04.2008**