



**REPUBLIC OF KENYA**

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

**Petition 356 of 2008**

**JULIUS KIMOLO MASEKI )**  
**MARY O. CHECHE**  
**HILDA ATIENO OCHAM )**  
**ALICE NEKESA GACHERU**  
**PAMELA APOLLO ) ..... PETITIONERS**  
**LYDIA K. KEITANY**  
**SEBENCIA W. AKWATA )**  
**JANE C. ODINDO.**

**AND**

**THE REGISTERED TRUSTEES**  
**POSTAL CORPORATION OF KENYA**  
**STAFF PENSION SCHEME..... RESPONDENT**

**RULING**

Before me is a Chamber Summons dated 16<sup>th</sup> June, 2008 filed by M/s Kingoo- Wanjau & Company advocates on behalf of 8 applicants/petitioners. The Chamber Summons is purported to have been filed under Rules 20 and 21 of the Constitution of Kenya (*Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual*) High Court Practice and Procedure Rules, 2006. The application was filed pursuant to a Petition dated 16<sup>th</sup> June, 2008, which was filed on the same date. The main prayers sought in the Chamber Summons application are conservancy orders listed as prayers 2, 3, 4 and 5 in the application.

There are several grounds listed on the face of the Chamber Summons. The application is also supported by the affidavit of JULIUS KIMOLO MASEKI, one of the applicants sworn on 13<sup>th</sup> June, 2008. The grounds are basically that the subject houses in issue on L.R. Number 209/50008 – 150025 otherwise known as third Ngong Avenue Maisonettes in Nairobi were being sold by the respondent, the Registered Trustees of Postal Corporation of Kenya Staff Pension Scheme. Though the houses, were to be sold with first-priority to members of the Pension Scheme, the applicants who were scheme members and occupants of the houses were instead given up to 31<sup>st</sup> July, 2008 to vacate the houses. That in terms of Section 40 of the Retirement Benefits Act, the best welfare and interest of pension scheme members should be upheld, which was not being done in this particular case. The supporting affidavit gives more details on the complaints of the applicants. There is emphasis in the affidavit that there was discrimination and double standards, as different treatment was being given to similar scheme members in Lantana Flats (*Westlands Nairobi*), Kindaruma Lane Apartments, and flats at Parklands and Ofafa Maringo Estate.

The application which was filed under certificate of urgency was heard ex-parte. Ms. Kingoo- Wanjau, Counsel for the applicants made extensive submissions in support of the orders sought. Counsel submitted that, other than the intended action of the respondents in evicting the applicants being discriminatory and contrary to Section 40(b) of the Retirement Benefits Act, 1997, it also went against the provisions of Section 74 and 82 of the Constitution. Counsel argued that if the orders sought were not granted, the applicants would suffer irreparable loss. On the other hand, if the orders sought were granted, the respondents would suffer no prejudice.

I have considered the application, and the orders sought. This is an application for conservatory orders. Under rule 20 of the Constitution of Kenya (*Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual*) High Court Practice and Procedure Rules, 2006, this court can grant conservatory or interim orders. The said rule provides-

*“20. Notwithstanding anything contained in these Rules, a judge before whom a petition under rule 12 is presented may hear and determine an application for conservatory or interim orders.”*

Having considered the application and submissions made before me, as well as having perused the petition filed herein, I am of the view that granting conservatory orders requested will be in the best interests of justice. Otherwise, from the facts placed before me, I am of the view that if conservatory orders are not granted, the applicants will suffer irreparable loss.

Consequently, I grant conservatory orders barring the respondents from evicting or in any manner interfering with the petitioners/applicants quiet possession of the premises mentioned in prayers 2, 3, 4, and 5 of the Chamber Summons. However, the conservatory orders hereby granted will operate for a period of only ninety (90) days from today, unless otherwise extended by the court.

It is so ordered.

Dated and delivered at Nairobi this 20<sup>th</sup> day of June, 2008.

**George Dulu**

**Judge.**

**In the presence of-**

Ms. Kingoo –Wanjau for applicants/petitioners.

Mwangi Court clerk.