



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Environment & Land Case 2360 of 2007**

**PETER MACHARIA WAMBUGU..... PLAINTIFF**

**VERSUS**

**ALGAMA (KENYA) LTD..... 1<sup>ST</sup> DEFENDANT**

**MOHAMED ADAN.....2<sup>ND</sup> DEFENDANT**

**SUKINA ADAN.....3<sup>RD</sup> DEFENDANT**

**COMMISSIONER OF POLICE.....1<sup>ST</sup> INTERESTED PARTY**

**HONOURABLE ATTORNEY – GENERAL.....2<sup>ND</sup>  
INTERESTED PARTY**

**RULING**

This Ruling relates to chamber summons application dated 20.12.07 stated to have been brought under Order XXXIX rules 1, 2, 3 and 9 of the Civil Procedure Rules plus sections 3 and 3 A of the Civil Procedure Act, Cap.21.

At the hearing of the application before me on 01.07.08 the plaintiff/applicant was represented by learned counsel, Mr E.N. Gichovi while there was no appearance for the defendants/respondents or the interested parties.

Plaintiff’s/applicant’s counsel informed this court that he was seeking prayers 2 and 3 of the application. These prayers are in the following terms:

**‘2. THAT alternatively, a restriction order be issued restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants and the Registrar of Titles from proceeding with any transfer or any other transaction on the title relating to all that parcel of land known as Land Reference No.7785/6171 I.R. NO.56570 situated in Runda Estate Nairobi until hearing and full determination of this suit.**

**3. THAT an injunction do issue restraining the interested parties, their subordinates, employees, servants and/or agents or any other person acting through them or on their behalf from harassing, intimidating and/or threatening the plaintiff until hearing and full determination**

**of this suit.'**

Evidence so far on record establishes that the respondents were initially served by substituted service through a newspaper advertisement published in the Daily Nation of Wednesday 02.04.08. The advertisement stated that the matter would be mentioned on 07.04.08 and that they should appear on that date. They never appeared. Eventually the application now under consideration was re-scheduled for hearing on 01.07.08. Plaintiff's/applicant's counsel informed this court on 01.07.08 that service of hearing notice for that day was effected on the defendants/respondents by registered post to their last known addresses. He referred the court in this regard to the affidavit of service by Stephen Gachie Mwanza, Advocate sworn on 30.06.08. The defendants/respondents did not attend court on 01.07.08. As for the interested parties, plaintiff's/applicant's counsel informed this court that they had always been served at their offices within Nairobi but they never appeared before court at any time. There is affidavit evidence establishing this assertion by plaintiff's/applicant's counsel.

In his affidavit sworn on 20.12.07 in support of the chamber summons of the same date, the plaintiff annexed a copy Certificate of Title to the suit land under the Registration of Titles Act, Cap.281. The said Certificate of Title shows that the suit land, which previously belonged to Algama Limited was transferred to him on 18.09.01. According to plaintiff's/applicant's counsel, the suit land is in danger of being alienated by the respondents, aided by the interested parties, hence the present chamber summons application for interim restraining orders. In this regard, plaintiff's/applicant's counsel drew the court's attention to paragraphs 11, 13, 16 and 17 of the plaintiff's supporting affidavit sworn on 20.12.07. They state:

**'11.THAT in the Daily Nation Newspaper of 10<sup>th</sup> October 2007 the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and whom I had known as the Directors of Algama (K) Ltd (1<sup>st</sup> defendant) put up a notice of Caveat Emptor in one of the pages claiming ownership and/or interest in the suit property and warning prospective buyers not to deal with me and that any dealings with me was at their own risk.**

**13. THAT the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have subsequently instigated other 3<sup>rd</sup> parties and whom I believe to be busybodies who have gone to higher authorities claiming that the transfer of the suit property to me was irregular and/or defective and that the 3<sup>rd</sup> parties are the rightful owners on behalf of Algama (K) Ltd, the 1<sup>st</sup> Defendant.**

**16. THAT the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have instigated the O.C.S. and D.C.I.O Gigiri who have resorted to threatening, intimidating and harassing me by making telephone calls to me to the effect that I should not continue development on any parcel of land.**

**17. THAT further to what I deponed (at) paragraph 5 hereinabove, the said O.C.S. and D.C.I.O. Gigiri have further sent emissaries and/or their subordinates to me with messages that I should surrender the original certificate of title to them so that they can initiate out of Court negotiations between me and the defendants herein so that they can arbitrate on the issue so that they can attribute (sic) on the issue.'**

Plaintiff's/applicant's counsel also drew the court's attention to paragraph 4 of the plaintiff's supplementary affidavit sworn on 27.02.08 which is to the effect that his efforts to get a Certificate of Official Search on the suit land have been frustrated because officials at Ardhi House (Nairobi) have always informed him that the relevant file cannot be traced.

Plaintiff's/applicant's counsel submitted that the plaintiff has sufficient proprietary interest in the suit land to warrant the court's exercise of its discretion in favour of granting the interim restraining orders sought in the present application, pending hearing and determination of this case. He also pointed out that the respondents have not appeared to oppose the application.

I have given due consideration to the application before court.

The plaintiff/applicant has deponed in his supporting affidavit sworn on 20.12.07 that the suit property was sold to him by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants; that he was registered as absolute proprietor of the suit property on 18.09.01; and that immediately after being so registered, the plaintiff took possession of the suit property and extensively developed the same. These averments have so far not been challenged by the defendants/respondents or the interested parties.

I am satisfied that the plaintiff/applicant has made out a case for the grant of the interim orders sought vide prayers 2 and 3 of the chamber summons application dated 20.12.07. Accordingly, the said prayers 2 and 3 are hereby granted.

Costs shall be in the course.

Orders accordingly.

Delivered at Nairobi this 23<sup>rd</sup> day of July, 2008.

**B.P. KUBO**

**JUDGE**