



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Civil Case 95 of 2003**

**JOHN WACHIRA WANGOMBE ..... PLAINTIFF**

**versus**

**CHARLES MUGAMBI WANGOMBE & ANO.... DEFENDANT**

**RULING**

The plaintiff has brought to court two applications for consideration in this ruling. The first application is a Chamber Summons dated 22<sup>nd</sup> May 2008. In that application the plaintiff seeks an injunction against the second defendant and one Magdaline Mumbi Mugambi to restrain them from entering building and cultivating amongst others on LR NO. 12618/1 Naromoru until the determination of this suit. It is not denied that the aforesated property is registered in the name of the plaintiff. The defendant in their defence admitted as much. Their defence against the plaintiff's claim for eviction was that the plaintiff had himself registered as the owner of that property without paying regard to their beneficial interests. That property originally belonged to the estate of Stephen Wangombe Wokabi. That as it may be until the title is changed from the name of the plaintiff, the plaintiff is the recognized registered owner of the land. The application for injunction was opposed by the second defendant on the basis that the first defendant is deceased. The main thrust of the second defendant argument is that the plaintiff's application for injunction fails because the main suit does not have a prayer for injunction. In support of that argument, the second defendant relied on the authority of STOCKMAN ROZEN KENYA LTD vs Da GAMA ROSE GROUP OF COMPANIES LTD (2002)1 KLR.

I have considered that authority and I have considered the argument of the second defendant. I am of the view that the plaintiff's application for injunction is not defeated by the lack of a prayer for injunction. The plaintiff in his plaint has prayed for eviction. Such a prayer is complementary to the prayer for injunction. I do however find that the plaintiff cannot obtain an injunction against Magdaline Mumbi Mugambi because she is not a party to this cause. The defendant did argue that the plaintiff's application is defeated as against him because the plaintiff in amending the plaint removed his name from the proceedings. I have perused the amended plaint and I do find that the second defendant's name was not struck out. The second defendant therefore is still a party in this case. Even looking at the defence filed herein the same was in respect of both defendants. I do therefore grant prayers as sought in chamber summons dated 22<sup>nd</sup> May 2008 in prayer No. 1 as against the second defendant only. The plaintiff is also awarded costs of that application.

The plaintiff's second application is by Notice of Motion dated 17<sup>th</sup> June 2008. That application seeks the committal to civil jail of the second defendant and Magdalene Mumbi Mugambi. Although the plaintiff argued that the application was for leave the prayers say otherwise. The basis of making that application is that, following the order of the court of 9<sup>th</sup> June 2008 that the same was served on the two respondents on 10<sup>th</sup> June 2008 together with the Penal Notice. I have perused the affidavit of service sworn by John M. Chere. That affidavit clearly indicates that the respondents were not personally served. It looks like it was their family members that were served. The sanctions of the law of contempt are powerful ones particularly the sanction of imprisonment. That being the case it is of utmost importance that a respondent be personally served with the order and the Penal Notice. On that basis alone and because of the plaintiff's failure to serve the respondent personally the Notice of Motion dated 17<sup>th</sup> June 2008 is hereby dismissed with costs to the second defendant.

**DATED AND DELIVERED THIS 21<sup>ST</sup> DAY OF JULY 2008**

**MARY KASANGO**

**JUDGE**