

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
ELC 377 of 2008

CYRUS NYORI MBUGUA.....PLAINTIFF

Versus

VOLTA INSURANCE CONSULTANT LTD.....DEFENDANT

RULING

The Chamber summons application dated 5th August 2008 is brought pursuant to order 39 rules 2, 2A, 3 and 9, Order 8 Rule 27 and 20 of the Civil Procedure Rules and S. 3A Civil Procedure Act. The Applicant seeks orders that the Defendants by themselves, their agents or servants be restrained by way of interim injunction from interfering, trespassing, carrying on any construction or erecting structures or carrying out any operations or anything on the Defendant's parcel of land known as LR 18469, IR 77465 situated at Mavoko Township pending the hearing and determination of this application and 2ndly that the court do confirm the interim orders sought restraining the Defendants from interfering with the Plaintiff's enjoyment of the suit land pending hearing and determination of the suit.

On 7th August 2008 when the Applicant came to court under vacation rules, the court certified the application as urgent and gave an inter partes hearing on 13th August 2008. On 17th August 2008 the Counsels informed the court that they had been unable to serve the Respondent and the court ordered that the Respondent be served by way of advertisement in the Daily Nation. The Applicant has filed an affidavit of service dated 22nd August 2008 and filed in court on 25th August 2008 which annexes extracts from the Daily Nation Newspaper of 18th August 2007 and 4th August 2008. They have also annexed the receipts which are evidence of payment to the Daily Nation Newspaper.

The court was satisfied that the service was effected as directed by the court and proceeding to hear the application ex parte as the Respondents did not appear.

The chamber Summons is supported by grounds found on the face of the application and an affidavit of the Plaintiff in which he depones that he is the proprietor of the said land. He annexed a grant under registration of titles Act issued to him on 4th May 1994 and registered on 29th September 1999. It is LR 18469 IR 77465. He also annexed land rate registration from Mavoko Municipal Council, a cheque in respect of the payment and clearance certificate dated 27th September 2007. It is the Applicant's case that on 2nd August 2008 he was called by his guards who informed him that the Defendant had trespassed on the said plot and was digging trenches and interfering with beacons. He enquired from the Lands Office but got no confirmation of the Defendant owning the land.

I have considered the Plaintiff's application which was unopposed despite service by advertisement. The Plaintiff has demonstrated that he is the sole proprietor of the disputed land. He exhibited the title and there is also evidence that he has paid the rates for the plot.

The Applicant's contention that Defendant is interfering with the plot has not been controverted. If one is digging trenches and interfering with beacons that is likely to cause irreparable harm and loss to the Applicant.

I am satisfied that the Applicant has demonstrated that he has prima facie case with good chances of success and I hereby grant an order of injunction in terms of prayer 3, restraining the Defendants, their

servants, employees or agent from interfering with the Plaintiff's quiet enjoyment of the suit land pending the hearing and determination of the suit. Costs to be in the cause.

Dated and delivered this 27th day of August 2008.

R.P.V. WENDOH

JUDGE

In the presence of:

Mr. Nyagah for Applicant

Daniel: Court Clerk