



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 1080 of 2006**

**SAMUEL RICHARD KAMITHA.....1<sup>ST</sup> PLAINTIFF**

**DANIEL MBIRI MUGI.....2<sup>ND</sup> PLAINTIFF**

**FRANCIS NGANGA WAHURIA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**GITHUNGURI PARADISE LIMITED.....RESPONDENT**

**RULING**

By way of a plaint dated 11<sup>th</sup> October 2006 and filed the same day the plaintiffs sued the defendant seeking declaratory orders as prayed therein.

Simultaneously with the plaint they brought a Chamber Summons under Certificate of Urgency and expressed to be brought under Order 39 Rule 12 and 9 of the Civil procedure Rules and Section 3A of the Civil Procedure Act seeking orders of Temporary Injunction as prayed in Prayers 2 and 3 of the Chamber Summons dated 11<sup>th</sup> October 2006.

Mr. Mwangi Githogo counsel for the plaintiff appeared before the Duty Judge and on application he obtained ex parte orders in terms of Prayer 1 and 2 of the Chamber Summons and it was further ordered that the plaintiff do serve the defendants and the matter was fixed for hearing inter parties on 30<sup>th</sup> October 2006. Service was effected and the parties appeared before Alouch J on 30<sup>th</sup> October 2006 when they recorded a consent order to appear before the Duty Judge on 3<sup>rd</sup> November 2006. They appeared before the Duty Judge on 3<sup>rd</sup> November 2006 when they were given 12<sup>th</sup> November 2006 for the hearing the application inter parties. They appeared before me.

Mr. Mwangi appeared for the applicant while Mr. Owaga held brief for Mr. Nganga for the Respondent. They took out the matter by consent and agreed that the application be heard on 6<sup>th</sup> February 2007. On 6<sup>th</sup> February 2006 Mr. Mwangi appeared for the applicant but there was no appearance for the Respondent.

M. Mwangi applied that the ex parte orders which were issue don 11<sup>th</sup> October 2006 be confirmed. He relied on the grounds as stated on the body of the Chamber Summons as well as the affidavit in support of the application sworn by Samuel Richard Kamitha on 11<sup>th</sup> October 2006.

Since the application is not opposed, the same is granted in terms of Prayers 3 and 4 of the Chamber Summons dated 11<sup>th</sup> October 2006 costs be in the suit.

Costs be costs in the suit.

Dated at Nairobi this 21<sup>st</sup> day of February 2007.

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**J.L.A. OSIEMO**

**JUDGE**