



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

**Civil Case 815 of 2006**

1. Land and Environmental Law Division

2. Subject of main suit: Mandatory injunction

a) That the plaintiff pull down a fence erected around land plot “B” Pumwani settlement.

b) Produce letter of allotment

c) To compensate the plaintiff for losses suffered by its members.

3. Application 26 July 2006

a) That the court issues a mandatory injunction pending the determination of the suit.

b) That the defendants be prohibited from dealing with plot No. “B” Pumwani Community.

c) That accounts be rendered of money collected with regard to development of Plot “B” Pumwani Settlement.

4. Arguments by plaintiff

Wall built and denied applicants access and their means of livelihood.

5. Arguments by defendant.

Issue of ownership is concerned as an issue.

Issue of locus.

6. Held i) Mandatory injunction to pull down fence rejected and dismissed.

ii) The defendant prohibited to deal with plot “B” Pumwani. The applicant to have access to the plot till finalization of suit.

iii) Defendant will not render account of money regarding development of plot.

7 Case law – Nil

8. Advocates:

M. Nag for Nero & Nag & Co. Advocates for the plaintiff – present

E.O. Masese for Kosgey and Masese Co. Advocates for the defendant- present

**SUDI AHMED MOHAMEMD ..... PLAINTIFF**

**VERSUS**

**IMAM AHMED JUMA .....DEFENDANT**

**RULING**

1: Background of application dated 26 June 2006.

1. For over 40 years and indeed prior to the independence the Muslim Community have been in occupation of a suit premises that lies between the Pumwani Social Hall and the District Officer's Office at Pumwani.

2. On this piece of land various social and business activities would be carried out. In the 1990's the government of Kenya

gh the City County of Nairobi permitted the Pumwani Muslim Community to be formerly allocated the said piece of land. The name of the plot so allocated was the Pumwani Muslim Community.

3. The policy of the Government is that land allocated must be developed or else it would be repossessed. The office of the Imam at Pumwani fearing this, appeared to have approached a donour who subsequently gave 2 million shillings for the development of the said plot. In order for this to be effected the name of the plot was changed through the Imam Office to the Pumwani Ruyadha Mosque. A committee was set up who were different from the Pumwani Muslim Community Committee. Infact the persons stated to be in occupation of the plot was a registered club known as the Katanga club.

4. The said land is also known as the Katanga base.

5. All persons in occupation were given a notice to vacate the said plot on 16 July 2006 as there was planed a ground breaking ceremony on 21 July 2006. It was due to this notice to quit of the wall that the plaintiffs filed this suit on 26 July 2006 seeking for orders of:-

i) A mandatory injunction that the fence erected be pulled down that is along plot "B" Pumwani settlement.

ii) That the letter of allotment be produced.

iii) and that the plaintiffs be compensated for the losses suffered.

II: Application dated 26 July 2006

6. By an application 26 July 2006 they sought orders under certificate of urgency being:-

**a) Mandatory injunction pending the determination of the suit.**

**b) Prohibition orders preventing the defendant from dealing with the suit.**

**c) That there be accounts rendered of money collected with regard to the development of Plot “B” Pumwani settlement.**

III: Arguments by the applicants.

7. The applicants stated that they were denied access to the plot which they had been in occupation with. That as a result they have lost their livelihoods and ask to be compensated. Further that the defendants secretly sold the plot to a third party.

IV: Arguments by the respondent

8. The said respondents stated that the plaintiffs have no locus before this court. This was a Preliminary Objection taken but later withdrawn by the respondent. I would therefore not dwell on this point. In the arguments before the court the plaintiff locus was spoken of.

9. The issue of ownership of the said premises was required to be canvassed according to defendant.

V) Finding

10. A mandatory injunction is not a remedy available to the Kenyan courts. The applicant prays that a wall erected by the respondents be pulled down. This wall in effect was constructed without their approval and has had the effect of shutting them out of their business that was being conducted at the said suit.

11. Unless there was indeed a very obvious reasons why a mandatory injunction be issued, it would not be generally be issued.

12. In this case I find that the prayer for a mandatory injunction is not available to the plaintiffs. What is available is access to the said suit premises. If from time immemorial the plaintiffs have, as a club and community, been in occupation of the premises the respondents require to deal with them and if possible find alternative avenues to deal with this matter including the law. It is to this end that I would grant orders that the defendants/respondent be restrained from dealing with the property being Plot No. “B” Pumwani Settlement until the determination of this suit. That the applicants be given access to the said plot if its status is as of 21 July 2006 until the determination of the suit.

13. I decline to order the issue of the defendant to render accounts of all money collected for the development of Plot “B” prior settlement as this indeed was never pleaded for in the main suit.

14. The costs herein will be in the cause.

Dated this 27<sup>th</sup> day of April 2007 at Nairobi.

**M.A. ANG’AWA**

**JUDGE**

M. Nyaga for Njeru & Nyaga & Co. Advocates for the plaintiff – present

E.O. Masese for Kosgey and Masese Co. Advocates for the defendant- present