

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

Civil Case 989 of 2003

NARENDRA B. PATEL & SURYAKANT B. PATEL.....PLAINTIFFS

VERSUS

LORIMAR APARTMENTS LTD.....DEFENDANTS

RULING

By way of this Chamber Summons dated 8th June 2006 and brought under Order XXXIX Rule 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the Plaintiff seeks injunctive orders to restrain the 2nd Defendants whether by itself, its servants, employees and/or agents from demolishing or in any way whatsoever interfering with the Plaintiff's fence or any wall thereof erected between the Plaintiff's property being LR NO. 20285 and the Defendant's property being LR. NO. 7158/88 and (or trespassing into the Plaintiff's property being LR. 20285 until the hearing and determination of this suit and/or until further orders of this court.

The application is based on the grounds that the 2nd Defendant has threatened to unlawfully trespass upon the Plaintiff's property aforesaid and that the wall in question was built with the approval of the 2nd Defendant. The Defendant on being served with this Chamber Summons filed a replying affidavit sworn by Mukosh Vaya in which he avers that the Plaintiffs purported title deed is subject to being challenged since the Plaintiffs had obtained the same through misrepresentation of material facts to the Commissioner of Lands and the City Council of Nairobi; that upon complaining to the Commissioner of Lands and the City Council of Nairobi the allocation of access road to the Plaintiffs was rescinded.

The orders sought by the Plaintiff in the main suit are similar orders to those sought in this Chamber Summons. The Plaintiff claims the Defendants allocation of the suit land was irregular and the Defendant also claims that the Plaintiff was allocated the land irregularly.

Since each claims the allocation to the other was irregular, there is no way the court can determine the dispute conclusively without the benefit of discovery and oral evidence being subjected to cross examination to establish the truth of the matter in dispute.

In the circumstances I am not persuaded to exercise my discretion in favour of the Applicant and grant the orders sought. I order that both parties make complete discovery and take a hearing date in the registry on priority basis for the hearing of the main suit. In the meantime I order that status quo as of now be maintained until the suit is heard and determined. And if the status quo is not distinct, each party be at liberty to apply.

Dated and delivered at Nairobi this 18th day of July 2007.

J.L.A. OSIEMO

JUDGE