

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI(MILIMANI LAW COURTS)

CIVIL CASE 2034 OF 2000

ALI ABDI MUNGAI (suing on his own behalf and on behalf of all the squatters

known as Kamiti Squatters Welfare Association)

.....**PLAINTIFF**

V E R S U S

CHRISTOPHER KANAI KAMAU.....

DEFENDANT

R U L I N G

This is an application (chamber summons dated 7th February, 2001) by the Defendant seeking an order to strike out the Plaintiff's suit upon the grounds that the plaint discloses no reasonable cause of action and is an abuse of the process of the court. It is brought under Order 6, rule 13 (1) (a) & (d) of the Civil Procedure Rules. An application under paragraph (a) does not permit a supporting affidavit (see sub-rule (2) of the same rule). But there is a supporting affidavit sworn to support the application under paragraph (d).

The Plaintiff has opposed the application as set out in his replying affidavit filed on 27th April 2001. The grounds of opposition emerging from the replying affidavit are to the effect that a reasonable cause of action is disclosed and that the suit is not an abuse of the process of the court.

At the hearing of the application there was no appearance for the Plaintiff though he had been duly served with hearing notice. I have considered the submissions of the Defendant's learned counsel, including the one case cited. I have also perused the plaint dated 4th December, 2000 and the affidavits filed herein.

It is apparent from the Plaintiff's own pleadings that he and the other persons on behalf of whom he brought this suit are squatters on the suit land, which is Government land. By virtue of the decision of the Court of Appeal in the case of **MICHAEL GITHINJI KIMOTHO –VS- NICHOLAS MURATHA MUGO, Nairobi Civil Appeal No. 53 of 1995** (Unreported), a squatter on Government land cannot acquire any rights or title to such land. Furthermore, it appears from the Defendant's affidavit sworn and filed on 19th December, 2000 in reply to the Plaintiff's application for temporary injunction pending disposal of the suit (chamber summons dated 4th December, 2000) that the Defendant has no interest at all in the suit land and has not evicted anybody therefrom. It appears that he merely happens to own parcels of land in the vicinity. If the Defendant acquired his parcels of land by allocation from the Government, as the plaint seems to suggest, the claimed interests of squatters cannot defeat the Defendant's interest in any land duly registered to him.

Having considered all matters placed before the court, I am satisfied that the plaint discloses no reasonable cause of action against the Defendant. The suit is an abuse of the process of the court.

I will therefore allow the application. The plaint herein is struck out and the suit dismissed with costs to the Defendant. There will be orders accordingly.

DATED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 9TH DAY OF NOVEMBER, 2007