

REPUBLIC OF KENYA

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

Civil Suit 1016 of 2006

JOSUA OMONDI AWUOR PLAINTIFF/APPLICATION

VERSUS

KENYA RAILWAYS CORPORATIONDEFENDANT/RESPONDENT

RULING

Chambers summons dated 25th September 2007 brought under order XXXIX Rules 1,2, and 3 of the Civil Procedure Rules and section 3A of the Civil Procedure Act praying for orders.

“That the Defendants/Respondents their servants and /or agents be restrained by an order of temporary injunction from in any way **evicting or interfering with the Plaintiff’s peaceful occupation and enjoyment of House No. VI 18 Door 4 Jogoo/Likoni Road, Makongeni Estate Nairobi.”**

The Applicant has told the court that he was a permanent and pensionable employee of the Respondents for 24 years and five months when the Respondents terminated the employment on what the Applicant calls illegal termination. By virtue of that employment the Applicant had been lawfully allocated the suit house and wants to continue living in the house when he is still fighting what he calls illegal termination of his employment by the Defendant in this suit where he claims his terminal benefits. He claims that before that stage is reached the Defendant either directly or indirectly now wants to evict him from the house in which he lives with his family.

It is revealed that the houses were transferred by the Defendants to the Trustees of the Kenya Railways Corporation Retirement Scheme and that the Respondents retained use of the houses which were being occupied by their current and former employees not yet paid their retirement dues and the Respondents authorized the said employees, to remain in their respective houses and letter of authority written to the Trustees of the Retirement Scheme with copies to affected employees. The Applicant was not given such letter and instead he is being threatened with eviction.

On the other hand, this application is opposed by the Respondents on the basis tht the houses having been transferred as aforesaid, the Respondents no longer have legal control. It is stated the case cannot be brought within the Principles found in the case of Giella vs. Cassmen Brown.

This Chamber Summons interrupted hearing of the main suit which may have been concluded by now and I thought the parties would reach a consent in the Chamber Summons and gave them time. They told me they could not reach consent hence hearing of this Chamber Summons.

From what has been said as a whole, it would appear the Defendants and the people to whom the houses are said to have been transferred seem to have some understanding whereby certain employees or former employees of the Defendants are allowed to remain in their respective houses until their dues are settled and in the circumstances, I do not see why the Plaintiff should not be treated as one of those employees even if he has brought the Defendants to this court. It remains only cross examination of the Plaintiff and the hearing of his only one witness before the hearing is closed for judgment to be delivered as the Defence say they are offering no evidence. We would by now have concluded the case had it not been because of this Chamber Summons which I feel should be granted to prevent disturbance to the Plaintiff to enable him concentrate on this case to have it finalized and be determined quickly to leave the Defendants free from the Plaintiff.

That being the position, the Chamber Summons dated 25th September 2007 be and is hereby granted in terms of prayers numbers 2 and 3, prayer number 2 being granted until the determination of this suit.

Dated this 5th Day of December 2007.

J.M. KHAMONI

JUDGE