



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

**Civil Suit 569 of 2006**

**BENEDETA NJERI ..... PLAINTIFF/APPLICANT**

**versus**

**STANLEY NGATHO NDUNGU ..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**OLKEJUADO COUNTY COUNCIL..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff brought this suit against the defendants seeking orders of a permanent injunction restraining the defendants their workers and or agents from interfering, wasting, alienating and or dealing in any manner whatsoever with Plot No.297 Ongata Rongai.

Simultaneously with the plaint the plaintiff brought this chamber summons expressed to be brought under Order XXXIX Rule 1(a) and (b) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The application is based on the grounds that the applicant is the lawful owner of the suit land and that the 1<sup>st</sup> defendant has commenced construction on the suit land belonging to the plaintiff.

Mr. Wachakana counsel for the applicant submitted that the applicant was allocated the suit land plot No. 297 – Ongata Rongai Trading Centre on 20-2-78 and she has been paying rent to the County Council of Olkejuado. This is supported by the letters of allotment issued by the Olkejuado County Council issued on 20.2.78. She paid Shs.300/00 annual rent, Sh.1168/00 survey fees Sh.190/= Local Authority Service charges and Sh.500/= plot identification fees. The applicant has been paying annual rent to the Olkejuado County Council since 1978 and she produced annual rent receipts to date. On 21-7-03 the District Planning Officer visited the locus and found that the suit land plot No. 297 is located behind Shell Petrol Station and compiled a report B3. The respondent started developing the suit land but was stopped by a temporary injunction issued by this court on 31-5-06 and urged the court to confirm the same until the hearing and determination of this suit.

Both defendants oppose the application. Mr. Gichuru counsel for the 1<sup>st</sup> defendant submitted that there are two plots and each party has his different and distinct plot. The 1<sup>st</sup> defendant had purchased plot No. 1057 Ongata Rongai measuring about 0.10 ha from one Alexander Kipayu Sialala on 26-10-05 and the 2<sup>nd</sup> defendant approved the transfer of the said plot from the original allottee to the 1<sup>st</sup> defendant on 26-10-05. In January 2006 the plaintiff approached the 1<sup>st</sup> defendant and informed him that he was developing her plot and the matter was referred to the Clerk Olkejuado County Council who confirmed to the 1<sup>st</sup> defendant that he was developing his correct plot No. 1057, Mr. Kinyanjui counsel for the 2<sup>nd</sup> defendant in opposing the plaintiffs application submitted that the council resolved the dispute between the parties. The 2<sup>nd</sup> defendant had sent a surveyor who showed each party his correct plot on the ground.

According to the submissions by both parties it is clear that the plaintiff was allocated plot NO. 297

while the 1<sup>st</sup> defendant purchased plot No. 1057 from one Alexander Kipayu Sialala. The confusion is on the ground. But according to the documents availed, the plaintiff was allocated plot No. 297 on 20.2.78. She paid survey fees of Sh.1168.00 and plot identification fees of Sh.500.00. She was shown her plot No. 297 and she paid rent and has been paying rent to the council from 1978 to date and she has produced payment receipts. The District Planning Officer was sent to the site to locate plot No. 297 and according to his report which he compiled on 21.7.03 plot No. 297 is located behind the Shell Petrol Station at a distance of approximately 250 m from the main Nairobi – Magadi Road and accessed through a 15m Road running from the main road towards the Ongata Rongai PCEA Church. It is the second plot on a road adjoining from PCEA Church road towards the police station. This is the plot in dispute. But on the contrary the 1<sup>st</sup> defendant has not produced any document to prove that this is plot No.1057.

That being the position I hold that the plot in dispute on the ground is plot No. 297 and from the submission of both counsel the plaintiff has satisfied the conditions for granting injunctive order as stated in the cited case of ***Guella VS Cassman Brown & Co. 1973 EA 357***. Accordingly I grant the plaintiffs application in terms of prayer 1 of the Chamber Summons dated 31<sup>st</sup> May, 2006. I decline to grant prayer (ii) of the Chamber Summons. The applicant seeks for an order directed to the Officer Commanding Ongata Rongai Police Station to assist in the enforcement of the orders ordered by this court but to utilize the police in a civil action for the purposes of effecting or aiding private evictions or reinstatements would be unlawful.

This was so stated in the case of ***KAMAU MUCUHA V. THE RIPPLES LTD CIVIL APPEAL NO. 1860 OF 1992***. The orders sought in this Chamber Summons are similar to the prayer sought in the plaint. I order that the orders granted above remain in force until the main suit is heard and determined. The parties to be given a date in the registry for the hearing of the main suit on priority basis.

**DATED** at Nairobi this 9<sup>th</sup> day of February, 2006.

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J.L.A. OSIEMO

**JUDGE.**