



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Civil Suit 354 of 1993**

**RAJAB KATEKE**

**ABDILAHAMISI DAHAB**

**ANDREW OCHIENG**

**DAVID MBUGUA**

**HASTINGS THUKU**

**SAID AWADH**

**JAMES ONYANGO KHANDA**

**RAPHAEL GONDI.....APPLICANTS**

**VERSUS**

**MUNICIPAL COUNCIL OF MOMBASA**

**PRABULA SHAH**

**JITENDRA M. KANABA**

**MR. SUTHIR**

**OMICRON INVESTMENT. ....RESPONDENTS**

**RULING**

In a summons dated 2<sup>nd</sup> September 2005, Rajab Kateka, Abdilahi Hamisi Dahab, Andrew Mbugua Kinyanjui, David Mbugua Kinyanjui, Hastings Thuku, Said Awadh, James Onyango Khanda and Raphael Gondi hereinafter referred to as the applicants sought for an order of temporary injunction to restrain the Municipal Council of Mombasa, Prabula Shah, Jitendra Kanaba, suthir and Omicron Investment hereinafter referred to as the respondents from interfering with the applicants' peaceful occupation and enjoyment of Plot No. 740/V/MN pending the hearing and determination of this suit. The application is supported by the affidavit of Abdillahi Hamisi Dahab sworn on 2<sup>nd</sup> September 2005.

When the summons came up for interpartes hearing, none of the Respondents turned up save for Mr. Asige, advocate for the 5<sup>th</sup> Respondent. Mr. Lijoodi advocate for the applicants argued in favour of the summons on the basis of the averments stated in the supporting affidavit. He urged this court to grant the orders sought to enable the applicants repair the premises standing on the suit premises otherwise the premises may go to waste. The applicants admit that the suit premises is registered in the name of the 5<sup>th</sup> defendant who has now shown its intention to move onto the suit premises. The applicants fear that the Respondents may destroy the suit premises leaving nothing to go for trial.

Mr. Asige advocate for the Respondents urged this court to reject the application because the applicants did not satisfy the conditions necessary for the grant of the orders of injunctions.

I have considered the arguments of learned counsels on both sides. I have also perused the pleadings and the facts deponed on affidavits. The principles necessary for the grant of temporary injunctions are well settled. The first test is that an applicant must show that he has a prima facie case with a probability of success. In this matter it is admitted in the plaint that the 5<sup>th</sup> Respondent, Omicron Investments Ltd. is the registered proprietor of Plot No. 740/V/M.N Mikindani. The applicants claim is that they occupy and are in exclusive possession of houses on the suit premises, which were put up on the basis of a memorandum of understanding agreement of 18<sup>th</sup> March 1972 between them and one Ali Mohammed Bin Gadin. The value of the structures standing on the suit land are stated in the plaint. The applicants aver that they are under constant pressure to vacate the land. They also claim that there is a threat to demolish the structures. They now claim that the structures should not be demolished until the amount of compensation is assessed or agreed upon. It is quite clear and it is clearly admitted that the applicants claim is on the basis of a memorandum of understanding. It is obvious that the memorandum of understanding was not registered nor noted in the register of the suit premises. Therefore the applicants have no registered interest over the land comprised in plot No. 740/V/M.N. hence in my view they have not demonstrated that they have a prima facie case with a probability of success against the 5<sup>th</sup> Respondent whose interest is superior in view of the fact that the 5<sup>th</sup> Respondent has title to the suit premises. On Account of the first principle, the applicants have failed to establish that.

The second principle is that the applicants must show that they are likely to suffer irreparable loss. In this case the applicants have alleged that the structures standing on the suit land need to be valued before they are demolished because it would be extremely difficult to establish its value. I have perused at the applicants amended amended amended Plaint. It is clear that the value of each structural standing on the suit land has been given.

The plaintiffs have also stated the cumulative sum for all the structures to be Kshs.968,000/-. The truth of the matter is that the damage anticipated is ascertainable. It has even been stated. Consequently I am satisfied that the applicants will not suffer irreparable loss.

I do not want to belabour considering the third principle, which is to the effect that when the court is in doubt, it should consider the balance of convenience. I am certainly not in doubt.

The end result is that the summons dated 2/9/2005 has no merit. It is dismissed with costs to the 5<sup>th</sup> Respondent.

**Dated and delivered at Mombasa this 31<sup>st</sup> day of May 2006.**

J.K. SERGON

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