



**REPUBLIC OF KENYA**

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

**Civil Suit 50 of 2005**

**JOSEPH KIVESI.....PLAINTIFF**

**VERSUS**

**WOTE TOWN COUNCIL.....1<sup>ST</sup> DEFENDANT**

**JAMES KINGOOMWILI.....2<sup>ND</sup> DEFENDANT**

**TERESIA KATUKU.....3<sup>RD</sup> DEFENDANT**

**RULING**

The plaintiff filed this suit by a plaint dated 26.5.2005. With it he also filed the application before the court dated the same day, seeking orders of injunction to restrain the defendants jointly and severally together with their agents, from entering plot No. 69 Wote Township as well as barring them from taking away from the plot plaintiff's property including building materials, or in any way dealing with the plot in a manner that would transfer or allocate the plot to any other or different person, until the suit is heard and determined.

The plaintiff/applicant's facts are that he was allocated plot No. 69 Wote Township by the first defendant in or about the year 1977, vide the Council minutes No. TPMH 23/77 OF 1977. The plot size is 30' x 100'. At the time Wote Town Council was part of and had not been split from, Masaku County Council. That in the year 2003 the 2<sup>nd</sup> and 3<sup>rd</sup> defendants entered and occupied the plot claiming to have been allocated temporary trade kiosks. They erected trading structures and started carrying on business. That when he informed them that the plot was his by earlier allocation, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants swore that they would not move away, claiming fresh allocation to them by the 1<sup>st</sup> defendant. That the plaintiff immediately filed a suit in Makeni Resident Magistrate's Court – suit No.5 of 2003 but his suit could not proceed as he was informed that the court had no jurisdiction. That the suit was struck out with leave to him to file a fresh suit at the High Court, which is this suit before the court.

The applicant/plaintiff swore in his affidavit that after he was allocated the plot NO. 69, he paid the rates and rents required ever since 1997 up to 2005. That on 25.2.2005 and 26.5.2005, the 1<sup>st</sup> defendant unlawfully and without plaintiff's consent or knowledge, carried away from the plot, his building materials including bricks. For this reason, and although he has claimed the value of the materials back, he fears that the 1<sup>st</sup> defendant may again enter the plot and carry more property. As for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant, the plaintiff fears they may continue being allocated licences by 1<sup>st</sup> defendant to continue trading on his plot to his detriment.

For the above reasons, the plaintiff claimed he needed protection of this court through restraining orders of injunction.

The 1<sup>st</sup> defendant did not seriously deny allocating the plot No.69 Wote to the plaintiff. Rather, it opined that the plaintiff had not developed or fenced or demarcated the plot to prevent other people interfering with it. The court understood the 1<sup>st</sup> defendant to be admitting that it may have licensed the 2<sup>nd</sup> and 3<sup>rd</sup> defendant because it did not know that the plot had been allocated to the plaintiff in view of the fact that there was no fence on the ground as an indication of allocation on the ground. The 1<sup>st</sup> defendant did not deny the plaintiff's claim that he had been paying the yearly rates and rents for the plot since 1995. Nor could such a defence have made sense on the face of the proper receipts produced by the plaintiff to support his claim.

As for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, their defence was that they had moved out of the plot before the case was filed in 2005. Thus they did not deny that before they moved out, they had jointly or severally entered and occupied plot No.69 aforesaid. They did not either confirm either that if they were to be re-allocated the same plot again they would decline.

I have carefully considered the material on the record and the arguments from both sides. I am satisfied that the plaintiff has

demonstrated a prima facie case that he was allocated plot No. 69 Wote, for which he has lawfully paid rates and rent until recently. He has demonstrated satisfactorily also that the 1<sup>st</sup> defendant unlawfully re-allocated the same plot to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants whether intentionally or inadvertently. I am also satisfied that the 1<sup>st</sup> defendant may possibly have entered the plot and unlawfully removed building materials there-from.

For the above grounds, it is the view of the court that he has demonstrated that he needs protection in the future from this court. The plaintiff was un-represented by counsel but he impressed the court that he was genuinely acting honestly and genuinely in protection of his property. This court needs to protect him by granting him the prayers he sought until the suit is heard and finally determined.

The upshot therefore is that the application is granted. An order of injunction restraining the 1<sup>st</sup> defendant from re-entering the plot and from removing plaintiff's property, or re-allocating the plot to third parties, should issue against the 1<sup>st</sup> defendant. As to the 2<sup>nd</sup> and 3<sup>rd</sup> defendant a restraining injunction should also issue against each one of them to prevent them from re-entering plot No. 69, Wote Township. The orders are to last until this suit is heard and finally determined.

The issue of jurisdiction did not impress this court. The plaintiff filed this suit in this court because his suit was struck out at Makueni for a similar reason and he was directed to file his suit in this court. This court should not throw him out in the same way back to the same court that threw him out.

Costs are payable by the Defendants jointly and/or severally, to the plaintiff.

It is so ordered.

Dated and delivered at Machakos this 9<sup>th</sup> day of **June, 2006.**

D.A. ONYANCHA

JUDGE