



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 695 of 2005**

**EMBROSE ACADEMY LTD. ....PLAINTIFF**

**VERSUS**

**CATHOLIC ARCH-DIOCESE OF NAIROBI.....1ST DEFENDANT  
(TRUSTEES REGISTERED)**

**ANNE NJERI .....2ND DEFENDANT**

**JECINTA WAMBUI .....3RD DEFENDANT**

**SUSAN WANGARI .....4TH DEFENDANT**

**(Being sued in their capacity as Officials of HUMAMA WOMEN GROUP)**

**PERPETUA OMARY ODONDO AND OTHERS.....5TH TO 53RD DEFENDANTS**

**RULING**

(1) This is a very interesting case.

The Plaintiff is a company called Embrose Academy Ltd. It claims to be the registered proprietor of all that piece or parcel of land comprised in Title No. Nairobi/Block 121/245 (“**the suit land**”) at Komarock in Nairobi measuring 4.456 hectares.

(2) On the 7<sup>th</sup> June 2005, the Plaintiff filed a suit against the Catholic Arch-Diocese of Nairobi and Anne Njeri, Jecinta Wambui and Susan Wangari in their capacity as officials of Humama Women Group. The Plaintiff says that the Defendants have without any colour of right encroached on the suit land and erected thereon illegal structures. And that the Archdiocese has put up a board declaring that the suit land is its property and constructed a concrete chain link fence around it. It has also erected a gate manned by a guard.

(3) The Plaintiff’s complaints against the other Defendants are that they have erected several

temporary iron sheet structures all over the suit land, a water storage tank and a structure purporting to be an office. The Plaintiff says it discovered all these developments on the 25<sup>th</sup> May 2005 when its agents went to clear the suit land in readiness for some development. Because of the encroachment, the Plaintiff says it cannot get access to the suit land and that unless the Defendants are permanently restrained, the trespass will continue and it will suffer irreparable loss and damage.

(4) The Plaintiff applied for a temporary injunction on the 7<sup>th</sup> June 2005 for orders —

“2. That the Respondents by themselves, their servants, agents, employees, assigns and/or representatives and/or any other persons, authority and/or body be and are hereby restrained from trespassing, carrying on any further construction, alienating, transferring, encroaching, erecting on and/or in any other way whatsoever interfering with all or any portion of land known as L.R. No. NAIROBI BLOCK 121/245 situated along Komarock/ Kangundo road, pending the hearing and determination of the matter interpartes.”

“3. An order permanently evicting the Respondents from the suit land.”

The application is made on the grounds that the Plaintiff is the registered owner of the suit land; that due to the encroachment it has no access to it; that it has a *prima facie* case with high chances of success; and that unless restrained the Defendants intend to continue with the encroachment.

(5) The supporting affidavit which contains virtually the same averments as those made in the Plaintiff was sworn by Simon Ndungu Kariuki who says he is the General Manager of the Plaintiff and duly authorized by the Plaintiff to swear the affidavit. He has annexed to his affidavit photographs of all the structures the Defendants have erected on the suit land. He has also annexed a copy of the Certificate of Lease dated the 30<sup>th</sup> July 1993.

(6) The Application is opposed. In his replying affidavit dated the 22<sup>nd</sup> July 2005, the Rev'd. Father Francisco Gonzales, the Parish Priest of Kayole Catholic Church, deponed that the First Defendant was allocated Plot No.93 Komarock Infills by the Nairobi City Council for the purpose of building a primary school on it. He has annexed a copy of a letter to this effect dated the 13<sup>th</sup> November 2003 signed by the Town Clerk. The school is in the process of construction and so far the First Defendant has spent close to K.Shs.1,000,000/=. Father Gonzales also says that it is this same plot that the Plaintiff claims to own.

(7) Anne Njeri, the Second Defendant, has filed a replying affidavit sworn on the 18<sup>th</sup> October 2005 on her own behalf as well as on behalf of the Third and Fourth Defendants and Humama Women Group. She has explained in great detail the activities Humama Women Group have undertaken on the property. She says that Humama Women Group as an entity and as individual members have occupied the suit land since 1989 and each of them has been issued with an Allotment Letter by the Nairobi City Council.

(8) Simon Kariuki swore a further affidavit on the 26<sup>th</sup> October 2005 in an attempt to deal with the points raised in Anne Njeri's replying affidavit. He deponed, *inter alia*:

“18. That in response to paragraph 10 of the replying affidavit the registered owner of Nairobi/Block 121/245 is Emrose Academy and not Embrose Academy. The misspelling of the name Emrose is a pure typing error.”

**“19. That in response to paragraph 11 of the replying affidavit, the purported plot no. 22 Komarock infills is part of the parcel of land known as Nairobi/ Block 121/245 measuring 4.456 ha which belongs to the Plaintiff as per the attached survey plan in my affidavit sworn on 6<sup>th</sup> September 2005 as SK 13.”**

(9) The application is also opposed by the Fifth to the Fifty-third Defendants upon the averments contained in the replying affidavit of Perpetua Omary Ondondo, Joseph Kamande and Beatrice Wanjiku Mariithi sworn on the 19<sup>th</sup> October 2005 on their own behalf as well as on behalf of Humama Komarock

Self Help Group and the named forty-five other members thereof.

(10) Miss Njoroge, learned counsel for the Plaintiff, urged me to grant the application because the Plaintiff has shown that it is the registered owner of the suit land and that the Defendants and others have encroached into the land. She also says that there is no evidence that some of the Defendants have occupied the suit land since 1989.

(11) Learned counsel for the Defendants have urged me to dismiss the application as the Plaintiff has not made out a case for the grant of the reliefs sought in the Chamber Summons.

(12) In my view, there are a number of reasons why the injunction sought should not be granted. The Plaintiff is a company called Embrose Academy Ltd. which claims to be the registered owner of the suit land. That is the name in the Complaint and the Summons issued by the court. It is also the name in the Chamber Summons and the initial affidavits sworn and filed by Simon Ndungu Kariuki, the Plaintiff's General Manager.

(13) A copy of the Certificate of Lease dated the 30<sup>th</sup> July 1993, produced by the Plaintiff, shows that the proprietor of the suit land is a company called Emrose Academy Ltd. These are two different companies. When this discrepancy was pointed out by the Defendants, Mr. Kariuki did not bother to amend the Complaint, but simply started swearing affidavits referring to the Plaintiff as Emrose Academy Ltd. In paragraph 18 of his affidavit dated the 26<sup>th</sup> October 2005, he now says the registered owner of the suit land is "**Emrose Academy**" and not "**Embrose Academy**" (*sic*). And he adds for good measure that the misspelling of the name Emrose is a pure typing error. That may well be so but in matters pertaining to law, the error cannot be dismissed quite so casually.

(14) The evidence before the court at this point indicates that a company called Emrose Academy Ltd., all the Defendants and individual members of Humama Women Group claim to be the owners of the suit land whether identified as Title No. Nairobi/Block 121/245 or the numbers given to each of the parcels in the Komarock Infills allocated to the Defendants and the members of Humama Women Group by the Nairobi City Council. And there may well be others still at large who are yet to stake their claims. No one can tell. It would be quite wrong, certainly unjust, in the face of this evidence to disregard the Defendants' claim to the suit land and grant the injunction in the form sought by the Plaintiff. The court must investigate the claims made by all those who have come forward and decide who the true owner is.

(15) The Plaintiff says it is the registered owner and is asking the court to drive the Defendants and members of Humama Women Group from the seat of judgment. The Defendants' claims are based on Letters of Allotment issued by the Nairobi City Council coupled with developments they have respectively carried out on the suit land. The Plaintiff calls these developments temporary structures but from the photographic evidence made available by the Plaintiff, I would be most hesitant to call these developments temporary structures. There is even a school in the process of construction by the First Defendant.

(16) Some of the members of Humama Women Group and Humama Komarock Self Help Group respectively claim to have lived on the suit land since 1989 — well before the Plaintiff acquired it.

(17) For these reasons, the application must fail. Accordingly, it is ordered that the Chamber Summons dated the 6<sup>th</sup> June 2005 and filed on the 7<sup>th</sup> June 2005 be and is hereby dismissed with costs to the Defendants. It is further ordered that the temporary injunction granted herein in terms of prayer No. 2 of the Application be and is hereby vacated and discharged.

Dated and delivered at Nairobi this Seventh day of June 2006.

P. Kihara Kariuki

Judge

