



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

**Civil Case 302 of 2006**

**KENSOM HOLDINGS CO. LTD & OTHERS.....PLAINTIFF**

**VERSUS**

**JACOB MWATATA MWILU.....1<sup>ST</sup> DEFENDANT**

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

**JORAM ORUKO.....3<sup>RD</sup> DEFENDANT**

**RULING**

The plaintiffs filed this suit against the defendants seeking judgment for (i) A permanent injunction restraining the defendants jointly and severally and their agents, and or servants from further trespassing upon the plaintiff's properties known as L.R. NO.209/14213, LR NO.209/14211 and LR NO. 209/14212 situated in Nairobi, causing any construction or development thereof (ii) A mandatory injunction compelling the defendants jointly and or agents to immediately vacate the plaintiffs respective properties for the plaintiff's use and occupation.

In paragraph 6 of the Plaint it is averred that at all material times, the 1<sup>st</sup> plaintiff was the registered proprietor of all that parcel of land known as LR NO.209/14213 situate in Nairobi and the 2<sup>nd</sup> defendant was the registered proprietor of the parcels of land known as LR NO.209/14211 and L.R. NO. 209/14212 both situate in Nairobi.

And in paragraph 7 the plaintiffs aver that in complete contravention of the plaintiffs proprietary rights the Defendants jointly and severally and through their servants and or agents trespasses upon the plaintiffs property and erected temporary structures thereon.

Simultaneously with the Plaint the plaintiffs brought a Chamber Summons under Certificate of Urgency for orders:-

- (1) That for reasons to be recorded service of this application be dispensed with in the first instance and the same be certified urgent.
- (2) That pending the hearing and determination of this Application inter parties this Honourable Court be pleased to issue a temporary order of injunction

restraining the Defendants jointly and severally either through themselves, their servants and or agents from trespassing upon the plaintiffs properties namely LR NO.209/14213, L.R. NO.209/14211 and L.R.

NO. 209/14212.

(3) That the Defendants jointly and severally, their servants and or agents be compelled by Mandatory injunction to immediately and unconditionally vacate the suit properties namely L.R. 209/1421, L.R. 209/14211 and L.R. NO. 209/14212.

(4) That the Kenya Police do help in the enforcement of any orders of this Honourable Court and (5) That the costs of this application be provided for. Mr. Odera counsel for the plaintiff appeared before the Duty Judge on 28<sup>th</sup> March 2006 whereto the judge made the following orders:

- (1) Based on the reasons outlined in the application, this matter is certified urgent.
- (2) I grant temporary injunction for 14 days only as per prayer 2 of the application dated 28<sup>th</sup> March 2006.
- (3) Application to be served forthwith.
- (4) Hearing inter parties on 5<sup>th</sup> April 2006.

On 5<sup>th</sup> April 2006 when the application came up for hearing, there was no appearance for the respondent. The matter was taken out and stood over to 27<sup>th</sup> April 2006 for hearing inter parties.

It was also ordered that hearing notice do issue and the interim orders were extended. When the matter came up for hearing on 27<sup>th</sup> April 2006 there was no appearance for the respondent but there was evidence of service and affidavit of service had been filed.

In the circumstances Mr. Odera counsel for the plaintiff applied that the Application dated 28<sup>th</sup> March 2006 be allowed as prayed. He relied on the applicants affidavit sworn on 28<sup>th</sup> March 2006. Since the defendants were served and they never filed any papers to oppose the application nor did they appear in court and the plaintiffs having established that they are the registered proprietors of the suit premises. I allow the application in terms as prayed in the Chamber Summons dated 28<sup>th</sup> March 2006.

Costs of this application be costs in the cause.

Dated at Nairobi this 6<sup>th</sup> day of June, 2006.

**J.L.A. OSIEMO**

**JUDGE**