

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

Civil Case 340 of 2003

**SAMUEL THACHI WANGI.....
.....PLAINTIFF**

VERSUS

**ALEX KAMAU1ST
DEFENDANT**

**LOISE WANJIRU THAMA.....2ND
DEFENDANT**

**RACHEL WARUGURU GACHERU.....3RD
DEFENDANT**

**AGNES WAIRIMU MUNENE.....4TH
DEFENDANT**

RULING

The plaintiff by way of this Chamber Summons expressed to be brought under Order XXXIX Rule 12 & 3 of the Civil procedure Rules and Sections 3A of the Civil Procedure Act seeks orders that a temporary injunction do issue against the defendants restraining them from any further digging of trenches, dumping of stones, sand and construction materials or any construction of any building in land parcel LR NO. KIAMBAA/KIHARA/427 (and now known as KIAMBAA/KIARA/3101 to 3110) pending the hearing and determination of this suit.

The application is supported by an affidavit sworn by the plaintiff in which he avers that he is the registered proprietor of the suit premises LR NO.KIAMBAA/KIHARA/427 and now known as LR NO. KIAMBAA/KIHARA/3101 to 3110 and he was surprised to see the defendants delivering building materials at the site claiming ownership.

The application is opposed on the grounds that the suit premises for which injunction is sought LR NO. KIAMBAA/KIHARA/427 does not exist as the same had been subdivided and new titles issued namely KIAMBAA/KIHARA/3101 to 3110. This is supported by official search which shows that the new titles are in the names of the defendants and others. This is conceded by the plaintiff in paragraph 3 of the plaint where he admits that land parcel LR NO. KIAMBAA/KIHARA/427 was subdivided into LR NO. KIAMBAA/KIHARA/3101 to 3110 and new titles have been issued.

That being the case the prayer sought by the plaintiff is not tenable. An order of injunction cannot issue to restrain the defendant from dumping building materials on a non existence premises. LR NO. KIAMBAA/KIHARA/427 having been subdivided and new titles created and issued.

The plaintiff's application is therefore dismissed with costs to the defendants.

Dated and delivered at Nairobi this 5th day of July 2006.

J.L.A. OSIEMO

JUDGE