

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

Civil Case 1379 of 2004

FRANCIS MUASYA

JAMES MAKAU

RACHAEL WANJIRU

PETER MWASYA Alias PETER MUASYA NDUKUTHYU

**(Suing on behalf of MUSIMAMO MWEMA WOMEN'S GROUP
MEMBERS.....PLAINTIFFS**

VERSUS

MR. KAVIVIA

**PROPERTY MANAGER KENYA AIRPORTS AUTHORITY.....
DEFENDANTS**

RULING

The plaintiffs on behalf of members of MUSIMAMO MWEMA WOMEN GROUP brought this suit against the defendants seeking an order of a Permanent Injunction restraining the defendants either by themselves, their agents and /or servants from transferring, allocating, erecting structures and/or trespassing upon land LR NO. 7135/R situated at Langata. They also sought costs of the suit.

In paragraph 4 of the Complaint, the plaintiffs aver that sometimes in the year 2002 they were charged in Criminal Case No. 6844 of 2002 which criminal case was withdrawn by the Attorney General.

In paragraph 5 of the complaint they aver that on or about the 12th December 2004, the defendants invaded the suit land and started allocating the same to people who have since started erecting structures thereof. Together with the complaint the plaintiff brought a Chamber Summons seeking injunctive orders pending the hearing and determination of the suit.

The defendant on being served with summons brought this Chamber Summons under the provisions of Order VI Rule 13 (a) (b) & (d) Order VII Rule 2 & 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking orders that the plaintiff's complaint dated 20th December 2004 be struck out with costs.

The application is based on the ground that the plaintiff's complaint does not disclose any cause of action against the defendants; that the 2nd defendant is indeed the registered owner of the suit property and has a clear and indefeasible title to the same; that the plaintiffs have not demonstrated in what capacity they have instituted this suit nor what right has been breached and what damage they have suffered; that the plaintiff's suit is an abuse of the process of the court process as no leave of the court has been sought or granted to prosecute this suit as a representative action; that the plaintiff's suit is scandalous, frivolous, and vexatious as the verifying affidavit of Francis Muasya sworn on 20th December 2004 is incompetent, fatally defective and inadmissible as a verifying affidavit.

The application is also supported by a detailed affidavit sworn by John Titoo, the Legal Officer of the 2nd defendant in which he avers that defendants are the registered owners of the suit land and that the plaintiffs are trespassers and were arrested and charged as such in court of law in Criminal Case no.6844 of 2002. The Respondents were served with this application but did not file any papers to oppose the same. The hearing proceeded ex parte.

Mr. Mwaura counsel for the defendants submitted that the plaintiffs have not demonstrated what right they are claiming in the suit property but on the contrary the defendant has demonstrated that it is the registered owner of the suit land and has produced title to support that contention.

The plaintiffs have neither demonstrated what right belonging to them has been breached nor what damage they have suffered and therefore the prayers sought are not tenable and the suit should be struck out as it does not disclose any cause of action against the defendants.

I therefore allow the applicants application in terms of prayers 1, 2 and 3 of the Chamber Summons dated 12th May 2006.

Dated and delivered at Nairobi this 25th day of September 2006.

J.L.A. OSIEMO

JUDGE