

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI LAW COURTS

Civil Suit 1367 of 2005

JUMA IBRAHIM.....PLAINTIFF

VERSUS

KENYA RAILWAYS CORPORATION.....DEFENDANT

RULING

By this Chamber Summons brought under Order 39 Rule (1) (a) 23(1) and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the plaintiff seeks orders of injunction restraining the defendants its employees servants and/or agents or otherwise from trespassing on L.R. NO. 209/13772 Plainsview Estate South B Nairobi and to further restrain them from continuing to damage and waste the plaintiff's property LR NO. 1209/13772 pending the hearing and determination of this suit.

The application is based on ground that the plaintiff is the registered proprietor of the suit property and the defendants employees and or agents descended upon the plaintiff's property and started demolishing the temporary perimeter fence.

The application is opposed by the defendant who has filed a replying affidavit sworn by Kamande Gitau in which he avers that the suit premises L.R. NO.209/13772 is the access road into the defendants land L.R. NO.209/9534.

Mr. Githinji counsel for the plaintiff submitted that the plaintiff had purchased the suit property from one the late Basil Muyuma Oloo who was registered as the owner through original grant by His Excellence the President of the Republic of Kenya. He had purchased the same without notice and thus registered proprietor.

Mr. Aboge counsel for the defendant concedes that the plaintiff is the registered proprietor of L.R. NO. 209/13772 while the defendant is the registered. Proprietor of L.R. NO. 209/9534 but submits that L.R. NO. 209/13772 part and parcel of the larger parcel of L.R. NO. 209/9534 in that L.R. NO. 209/13772 was excised from L.R. NO. 209/9534 which was reserved for the access road to L.R. NO. 209/9534.

Since each party is registered as proprietor of separate and distinct premises, non will claim a superior right to the other until the matter is heard and the issues determined through evidence.

The plaintiff had obtained an ex parte injunction on 14th November 2005, I allow the plaintiff's application and order that the ex parte injunction is herein confirmed and to be in force until the hearing ad determination of this suit.

Dated and delivered at Nairobi this 19th day of October 2006.

J.L.A. OSIEMO

JUDGE