



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Suit 1232 of 2004**

**GERISHON KAMAU KIRIMA ..... PLAINTIFF**

**VERSUS**

**THE PERMANENT SECRETARY,**

**MINISTRY OF ROADS AND PUBLIC WORKS ..... 1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

The Applicant herein has moved the Court under Order VI Rules 13 (1) (b) (c) and (d) of the Civil Procedure Rules and section 3A of the Civil Procedure Act praying, inter alia that Respondents' Defence to the suit be struck out and Judgment entered for the applicant as prayed in his plaint dated 10<sup>th</sup> November, 2004 and filed on 11<sup>th</sup> November, 2004.

The Plaintiff's suit is for

- (1) The payment by the Defendant/Respondent of Shs.24,300,000/= being the value of his property namely L.R.No.209/11414 allegedly demolished by the Defendant/Respondent with the intention of constructing a road (commonly known as the Northern By-pass).**
- (2) Loss of rental income of Shs.120,000/= per month (from 22<sup>nd</sup> January 2004 allegedly accruing to the Plaintiff) Applicant from the renting of the suit premises.**
- (3) Interest at court rates on the sums claimed together with costs of the suit.**

The Plaintiff/Applicant's claim is based on the ground that the said demolition was illegal unlawful and without due process of law, highly oppressive, highhanded and a breach of the Plaintiff/Respondent's Constitutional Right and Protection of Private Property. Although in the body of the Plaint the applicant claims to have been allocated two plots namely, L.R. No.209/11414 and L.R. No.209/11415 (both previously comprised in one plot known as L.R. No.7741/77), his claim as per the Plaint cited above relate to L.R. No.209/11414 in which he had constructed the residential property allegedly demolished on 22<sup>nd</sup> January, 2004. He has in the present application annexed as exhibits "GKK5" and "GKK5" the respective grants issued to him in respect of the two plots.

I have studied both the Replying Affidavit sworn by the Permanent Secretary, Ministry of Roads and

Public Works on 9<sup>th</sup> June, 2006 and the Defence sought to be struck out. I have noted that in both the affidavit and the Defence, the Respondent does state that the suit premises were compulsorily acquired by the Government sometime in 1975 under the Provisions of the Land Acquisition Act for public use and a Gazette Notice issued in respect to the said compulsory acquisition. In paragraph 6 of the Defence the Respondent contends that due compensation was paid for the alleged compulsory acquisition and in Paragraph 7 the Defence states that the land was then registered in the favour of the Government and reserved for the construction of the already cited by-pass road. The Defence also alleges in paragraph 12 that due Notice was issued to the Plaintiff to remove his structure prior to the demolition of the property claimed and does rebut the allegations of malice, illegality, unlawfulness spite or contempt. The Defence also denied and puts the Plaintiff/Applicant to strict prove that the property complained of holds a value of shs.24,380,000/=.

I would not, having taken note of all the above accept the Applicant's claim that the Defence filed herein is a mere denial aimed at delaying the hearing of the suit or that it befits the other descriptions ascribed to it in the grounds set out in the Chamber Summons dated 23<sup>rd</sup> March, 2006. Instead I find that it does raise triable issues, which can only be determined at a full trial, evidence being adduced by both sides. I do not consider the same deserving of an order to strike it out under order VI Rules 13(1) (b) (c) and (d) of the Civil Procedures Rules.

For that reason I have no alternative but to dismiss this application with costs to the Respondent, having also considered, the authorities submitted herein which, although being acceptable as good law do not assist the applicant in his application.

Accordingly the application is hereby dismissed with costs.

Dated and delivered at Nairobi this 8<sup>th</sup> day of December 2006

**M. MUGO**

JUDGE

**Ruling delivered in the presence of:**

**For the Applicant:**

**For the Respondent: Kamotho holding brief for Mwaniki**