

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1196 of 2004

RAJNI KANT NATHOO.....PLAINTIFF

VERSUS

EDWARD NTHULI.....1ST DEFENDANT

PAUL GITHAIGA NG'ANG'A.....2ND DEFENDANT

RAMJI MANJI SHAMJI.....3RD DEFENDANT

COMMISSIONER OF LANDS.....4TH DEFENDANT

HONOURABLE ATTORNEY GENERAL.....5TH DEFENDANT

JUDGMENT

In a plaint filed on 21st December 2004, the plaintiff avers that he was allotted LR NO.209/4537 by the Commissioner of Land on 2nd November 1983 and was issued with a Grant LR NO.38119. He is the registered proprietor on 24TH October 2004 he discovered that the 3rd Defendant had trespassed onto his said property and commenced construction of buildings. The 3rd Defendant also claims that he was allotted the same by the Commissioner of Lands.

He filed this suit seeking a declaration that the purported grant of the suit property by the Commissioner of Lands was fraudulently and unlawful and a mandatory injunction against the 3rd Defendant to demolish all the buildings and structures erected on the suit property. Simultaneously with the filing of the plaint, the plaintiff filed a Chamber Summons application under Certificate of Urgency wherein he sought orders that the 3rd Defendant be ordered to vacated and remove all his properties and equipment from the suit land and further that he be restrained from entering upon or in any way interfering with the plaintiff's right of occupation of the suit land. The application is supported by an affidavit sworn on 5th November 2004 where he basically swears to the facts averred in the plaint namely that he is the registered proprietor of the suit land and that the 3rd Defendant has trespassed and started constructing building on the same.

The application is opposed by Mr. Gachiri on behalf of the 3rd Defendant who submitted that the orders sought are not capable of being granted. The plaintiff seeks a temporary injunction to restrain the 3rd Defendant from entering the suit premises but the 3rd Defendant is already in the suit land and he has put several structures and his family is already living there. That this suit was brought after the construction was complete. The order sought if granted will cause eviction of the 3rd Defendant.

That the 3rd Defendant is already on the suit land is admitted by the plaintiff because some of the orders sought is for the 3rd Defendant to be ordered to remove his property from the suit land and demolish structures he has already erected there. That being the position injunction relief cannot issue to restrain what has already taken place.

The orders sought therefore are not tenable and the application ought to be dismissed.

It is dismissed with costs.

Dated at Nairobi this 19th day of May 2005.

