

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

REPUBLIC OF KENYA

Civil Case 14 of 2003

NZEMBI MUCHIRI.....PLAINTIFF

Versus

GABRIEL MBITI MULEI.....DEFENDANT

RULING

Chamber Summons dated 24th January, 2003 filed under *Order XXXIX* Rules 1, 2, 3 and 4 of the Civil Procedure Rules for an injunction. The Applicant is relying on the grounds set out on the body of the Chamber Summons as supported by his affidavit dated 27th January 2002.

The Chamber Summons is opposed by the Respondent who has filed a Replying Affidavit.

I have heard submissions from Mr. Wahome Gikonyo, Counsel for the Applicant and Mr. Okwaro, Counsel for the Respondent and looking at the filed documents, I have no doubt in my mind that this is a Chamber Summons filed by the Plaintiff in this suit simply because the present prevailing practice is that no Complaint is filed without an accompanying interlocutory application for an injunction. Otherwise correctly in law and with serious consideration, none of these parties before me now expects me to rule to-day that the Plaintiff is the lawful owner of the suit land and that therefore the Defendant, without any colour of right, has unlawfully started entering into the suit land and has started felling down trees and committing other acts of waste on the same.

Yet if I grant this Chamber Summons, I will be saying just that, for those are the grounds upon which the Chamber Summons is based.

As I cannot make those statements before evidence in this suit is heard, tested, canvassed and evaluated during the hearing of the main suit, this Chamber Summons is hereby dismissed with costs to the Respondent.

Dated this 2nd day of June 2005.

**J. M. KHAMONI
JUDGE**

