



**REPUBLIC OF KENYA**

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

**CIVIL CASE 1299 OF 2004**

**V J.....APPLICANT**

**VERSUS**

**P N N.....1<sup>ST</sup> DEFENDANT**

**O K J.....2<sup>ND</sup> DEFENDANT**

**RULING**

The plaintiff by way of this Chamber Summons expressed to be brought under Order XXXIX Rule 1 and 2 of the Civil Procedure Rules and Section 3A and 5 of the Civil Procedure Act seeks Order:-

“3” That the Defendants be restrained from harassing threatening, beating lynching or in way physically harming him and

“4” That the Defendants jointly and severally be restrained from evicting or in any way interfering with the plaintiffs quiet possession and occupation and parcels of land **NOS. LR NAIROBI/BLOCK[Particulars Withheld] and LR NAIROBI/BLOCK[Particulars Withheld]** until the determination of this suit

“5” That the Defendants be restrained from letting or selling or interfering with the above named suit properties and

“6” That the plaintiff be accorded access to his two daughters namely **L V and K V**.

The application is premised on the ground that the defendants have threatened to injure the plaintiff, and that they have prevented the plaintiff from access to the suit property which he uses for his business and where he keeps his collections of architectural drawings. The application is supported by a sworn affidavit in which the plaintiff has avers that the 1<sup>st</sup> respondent has denied the applicant access to the suit premises that although they are registered in the name of the 1<sup>st</sup> respondent he had purchased them with his own money and later transferred them to the 1<sup>st</sup> respondent as a trustee.

The application is opposed by the respondents who have filed replying affidavit in which they aver that the 1<sup>st</sup> Defendant is the registered proprietor of the parcels of land comprised in **LR NAIROBI BLOCK[Particulars Withheld]** and **LR NAIROBI BLOCK [Particulars Withheld]**. She has annexed copies of title certificates, that the plaintiff is not denied access to the two named children, that the plaintiff has not been denied access to the suit premises, and lastly that the applicant is not denied access to his daughters.

Mr. Mugo for the applicant submitted that the suit property belongs to the applicant but was registered in the name of the respondent as a trustee and that if injunction is not granted the applicant will suffer irreparable damage. Mr. Ogwen for the respondent submitted that the applicant has not satisfied the conditions for grant of an interlocutory injunction which are: existence of probability of success, likelihood of irreparable harm which would not be compensated for by damages and balance of convenience.

These the applicant has not satisfied. The two parcels of land **LR NO. NAIROBI BLOCK [Particulars Withheld]** and **LR NO. NAIROBI BLOCK [Particulars Withheld]** are the property of the 1<sup>st</sup> respondent who is the registered proprietor and further that the applicant has not been denied access to the said property.

From the exhibits annexed to this application it is clear that the 1<sup>st</sup> defendant is the registered proprietor of the suit premises. It is also not denied that the applicant is using **LR NO. NAIROBI BLOCK [Particulars Withheld]** as his architectural office and library and where he stores the tools of his profession as well as architectural drawings. In her statement of defence and also in the replying affidavit sworn by the 1<sup>st</sup> defendant it is averred that the plaintiff has access to **LR NO. NAIROBI BLOCK [Particulars Withheld]** and he has all the keys to premises.

This dispute involves a man and a woman who have lived together for the last 17 years. They have two issues of the relationship although their marital status are not clear. The second defendant is the son of the applicant from another woman but who had come to stay and he is staying with them. The 1<sup>st</sup> defendant in her affidavit has denied that the plaintiff is denied access to the suit premises nor access to their two daughters. In the circumstances fair and just orders would be as follows. The plaintiff’s application is allowed in terms of Prayer 3, Prayer 4 limited to **LR NO. NAIROBI BLOCK [Particulars Withheld]** and Prayer 5 limited to **LR NO. NAIROBI BLOCK [Particulars Withheld]** until this suit is heard and determined.

Those are the orders of this court.

**Dated and delivered this 15<sup>th</sup> day of July 2005.**

**P.J. RANSLEY**

**JUDGE**