



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE 523 OF 2001

ROBERT MWAURA AND 299.....PLAINTIFFS/RESPONDENTS

VERSUS

MOSES CHEPKWONY AND 5 OTHERS.....DEFENDANTS/APPLICANTS

RULING

By way of a plaint dated 29th March 2001 and amended on 29th March 2003 the plaintiffs Rover Mwaura and 299 others registered as *MALIMUNGU JUA KALI ASSOCIATION* brought this suit against the defendants seeking:

- (a) A permanent injunction restraining the defendants either by themselves, their agents, servants and/ or employees from evicting entering, demolishing, wasting, trespassing, alienating, and/ or in any other way interfering with *LR NO. KANGUNDO ROAD/EMBAKASI/18288 NAIROBI*.
- (b) A declaration that the plaintiffs herein are the legal and rightful owners of *LR NO. KANGUNDO ROAD/EMBAKASI/18288 NAIROBI*.
- (c) General damages
- (d) Costs of the suit

On the 24th May, 2005, the 1st, 2nd and 3rd defendants brought this application by way of Chamber Summons under Order VI Rule 13 and 16 of the Civil procedure Rules and Section 3A of the Civil Procedure Act seeking orders that the plaintiffs plaint be struck out on the ground that the plaint is otherwise an abuse of the process of the court.

Counsel for the defendants submitted that the plaintiffs’ plaint should be struck out for being incompetent and defective and as it offends the provisions of Order VII Rule 1(e) of the Civil Procedure Rules which provides:

“O. VII (1) *The plaint shall contain the following particulars:*

- (a)
- (b)
- (c)

(d)

(c) *An averment that there is no other suit pending and that there have been no previous proceedings in any court between the plaintiff and defendant over the same subject matter.”*

The plaintiffs were served but they never appeared to defend the application nor did they file any replying affidavit.

After the submissions by counsel for the defendants and also after having perused the pleadings it is clear and I am satisfied that there was no compliance of the provisions of Order VII Rule (1) (e) of the Civil Procedure Rules. This therefore renders the plaintiffs’ suit incompetent and the same is struck out with costs to the defendants.

Delivered and dated at Nairobi this 22nd day of September 2005.

J.L.A. OSIEMO

JUDGE