

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Case 4 of 2004

MOHAMED IQBAL**PLAINTIFF**

VERSUS

MWINYI SALIM DZULA
RAMA HAMISI
ALI NGUVU
MWALIMU CHARO

JUMA MWAKUFUNZWA**DEFENDANTS**

R U L I N G

Chamber Summons dated 21/9/2004 seeks orders for injunction against the defendants to restrain them from interfering with Plot No. 415/I/MS Shelly Beach area Likoni on the grounds that the Plaintiff is the registered owner of the Plot and the defendants without any colour sought have invaded the said parcel of land and are constructing residential houses without approval given the applicant and Mombasa Municipal Council. That their acts amounts to taking the Plaintiff's property without compensating him and the applicant shall suffer irreparable harm unless injunction is issued.

The Application is supported by affidavit of the Plaintiff. There is opposition from the defendants who claim had to be their ancestral land which has been in their possession all along and they have constructed semi-permanent houses on the said land.

Upon perusing the exhibits annexed to the supporting affidavit it appears that the suit plot of land forms part of an estate of a deceased person and a grant issued to the plaintiff on 12/7/1995 and confirmed on 15/3/1996. Lists plot No.415/M/S South coast as part of the inherited assets. The certificate of lease was issued on 24/5/2004. These documents are not explained by the Plaintiff/Applicant.

In the schedule the Plaintiff is described as trustee. Temporary injunctions are in the discretion of court. In this suit the end prayer in the plaint is injunction and vacant possession. From the material laid before the court by the applicant there is no grounds to warrant granting the orders sought. The title to the property is not clear. The Applicant does not satisfy the principles in the case of Giela Cassman – Brown case and I decline to issue orders sought.

I direct that the Plaintiff make urgent arrangements for the hearing of the whole suit.

Costs in the cause.

Delivered and dated at Mombasa this 12th day of October 2005.

J. KHAMINWA

J U D G E

Mr. Khatib for plaintiff present.

KHAMINWA, J