



**REPUBLIC OF KENYA**

**HIGH COURT AT MACHAKOS  
CIVIL CASE NO. 46 of 2004**

**SHADRACK MUTIA MUIU..... PLAINTIFF**

**VERSUS**

**PROF. K. KIBWANA**

**KALEMBE NDILE**

**ALOIS MUIA**

**NICODEMUS MUTUKU NGALAMA.....DEFENDANTS**

**R U L I N G**

The application for determination is the chamber summons dated 28.4.2004 in which the applicant seeks orders of injunction to restrain the defendant/respondent, their agents or servants from entering, trespassing or destroying the fence, vegetation, or trees of the plaintiff/applicant and from further inciting members of public with weapons or in any way interfering with this suit premises known as LR 9730/5 belonging to the applicant and causing violence to the plaintiff till the suit is heard and determined. The grounds upon which the application is brought are found on the face of the application and the application is further supported by the affidavit of Shadrack Mutia Muiu the plaintiff/applicant.

The plaintiff/applicant depones that he is the registered owner of the land parcel LR 9730/5 at Sultan Hamud as evidenced by the title deed annexed as SMM I. It is for 999 years dating from 1955, and was issued in 1981. He has lived on the land since and that the land had no squatters but on 23.4.2004 the defendants led a group of about 700 people who were armed with pangas and machetes onto the said land who intended to evict him and subdivide the land amongst squatters without any court order. They destroyed his fences, trees and vegetation and created a road on the land. They were only restrained by police and that the defendants threatened to come back. The applicant annexed a newspaper report SMM II. The newspaper report was in relation to the invasion of the land and defendants promised not to rest till they settled squatters in their areas. Plaintiff prays that the respondents be restrained from repeating the same. Mr. Nyamu came on record as having conduct of the case on behalf of the respondents. He was served for hearing on 11.6.2004 but failed to attend court. The application was adjourned to 23.6.2004 for hearing. Somebody held brief for Mr. Nyamu but he had no audience as no court adjournment fees which was ordered on 18.5.2004 had not been paid. No papers had been filed by respondents. The matter proceeded ex parte.

The applicant has shown that he is the registered owner of the land parcel No. LR 9730/5. There is no evidence that part of it or all of it belongs to anybody else other than the applicant. There is evidence even from the newspapers that there was invasion of the suit land by the defendants with a big crowd who were referred to as squatters who caused chaos and damage to the said land. This is private land and defendants have not shown that they had any right to invade it with the group of squatters. If such invasion is repeated the applicant is bound to suffer irreparable loss and having shown that applicant is the owner of the land, it is only proper that an order of injunction do issue restraining the defendants/respondents, their agents or servants from interfering with the said land in any way till this matter is heard and determined. Costs to be in the cause.

**Dated, read and delivered at Machakos this 13th day of July 2004.**

**R. V. WENDOH**

**JUDGE**