



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 924 of 2004

HARRISON MUSAU PLAINTIFF

-versus-

SIMON SABONYO1ST DEFENDANT

TAMOS OLEWALLAH2ND DEFENDANT

DAUDI TEKAA3RD DEFENDANT

R U L I N G

The Plaintiff/Applicant has by a Chamber Summons application dated and filed on the 31st August 2004 moved the court for orders including that the Defendants/Respondents be compelled by mandatory injunction immediately and unconditionally to vacate the suit property being land Reference Number 13869, Nairobi. The application is premised on the several grounds set out therein and supported by the affidavit of the Applicant made on the 31st August 2004.

This application is opposed upon the Grounds of Objection dated the 30th September 2004 supported by the affidavit of the Respondent also dated on the 30th September 2004.

Mr. Odera, learned counsel for the Applicant, and citing several authorities including Michael Githinji Kimotho v. Nicholas Muratha Mugo (Civil Appeal No. 53 of 1995) (unreported) urged me to grant the orders prayed as the rights of the Applicant and his wife as the registered proprietors of the suit property are absolute and indefeasible by virtue of section 23 of the Registration of Titles Act and cannot be challenged or defeated except as is provided in that Act.

In response, Mr. Ngaah for the Respondents contended (*inter alia*) that any orders granted would be in vain as the Respondents do not live on the suit property and that in any event, the Applicant has not demonstrated any special circumstances warranting the granting of a mandatory injunction, including due compliance with the special conditions to the Grant under which the property is held by the Applicant,

I have considered the application in conjunction with the submissions of learned counsel. I have also taken into account that in the common law tradition, which is part of our heritage of legal culture, and under the commonplace constitutional principles considered an essential element in political civilization, the sanctity of private property is a virtue. The Applicant before me is stating a single fact - that he and his wife are the owners of the suit property (their title being guaranteed by the state under the

Constitution) and that their rights thereto have and continue to be unlawfully infringed by the Respondents.

Though the Respondents have, in their said affidavit, deponed “that to the best of our knowledge none of us lives or has trespassed upon the said property”, the Applicant, who knows the extent of his property, states that the Respondents have trespassed onto the suit property and the development or sale thereof is being frustrated.

In these circumstances, I am satisfied not only that the Applicant has met the requirements for the granting of the orders sought as enunciated in **Giella v, Cassman Brown & Co. Ltd** [1973] E.A. 358 but also that the Applicant is entitled to a mandatory injunction following the principles in **Kamau Mucuha v. The Ripples Ltd.** (Civil Application No. NAI 186 of 1992 (NAI 77/92 UR)) (unreported).

Accordingly, I allow the application and order that orders in terms of prayers 3 and 4 of the Chamber Summons application dated the 31st August 2004 be and are hereby granted with costs to the Plaintiff/Applicant.

Dated and delivered at Nairobi this 12th day of September 2004.

P. Kihara Kariuki

Ag. Judge