



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL APPEAL NO. 428 OF 2002**

**(FROM THE ORIGINAL CIVIL SUIT NO. 355 OF 2002 OF THE SENIOR RESIDENT  
MAGISTRATE'S COURT AT NAIVASHA)**

**KARAGITA SELF HELP MIXED GROUP.....APPELLANT**

**VERSUS**

**GRACE WANGUI.....RESPONDENT**

**JUDGMENT**

Appellant appeals against the Ruling and order of Senior Principal Magistrate Naivasha allowing the Respondents application for an order of interlocutory injunction to restrain appellant from inter alia, demolishing Respondents buildings in the disputed premises until the full determination of the suit.

I have perused the pleadings in the suit, the application for interlocutory injunction and supporting documents and the replying affidavit and annexed documents. I have also considered the counsel's submission in the Lower court and submissions by applicants counsel in this court.

The relief sought in the plaint is a declaration that plaintiffs have a share holders right to retain their buildings in the suit premises. There was no dispute that plaintiffs had applied to be admitted members of the defendant and that they had been admitted as members on condition that they paid shs 150,000.

There was also no dispute that both plaintiffs had paid a total of shs 61,000. They alleged that defendant rejected an installment of shs 40,000 for no justifiable reason. Plaintiffs produced photographs showing that they had constructed two permanent buildings on the disputed plots. The learned Magistrate found that the matter would not be decided solely on the strength of affidavits. He found need for oral evidence and granted an interlocutory injunction pending the determination of the suit on priority basis.

The order of injunction is a discretionary and equitable remedy. The learned Magistrate in his discretion decided that an order of injunction was necessary. It has not been shown that the learned magistrate erred in principle in granting an order of injunction.

The dispute as to who was in breach of the Agreement was pending for determination. That dispute is still pending in court. It is the dispute that the learned magistrate declined to resolve on the affidavits. The respondents have constructed permanent buildings on the disputed plot. If the order of injunction was not granted, the applicants would have demolished the respondents permanent buildings.

That would have rendered the suit nugatory and respondents would have suffered substantial loss. In my view, the Learned Magistrate exercise his discretion judicially and in an equitable manner as he preserved the permanent building pending litigation.

The appeal has no merit and is dismissed with no orders as to costs.

**E. M. Githinji**

**JUDGE**

**28.1.2003**

**Mr. Rumba Kinuthia present**