



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1164 OF 2003

MUA PARK INVESTMENTS LIMITED..... PLAINTIFF/APPLICANT

VERSUS

IMARA DAIMA SELF-HELP GROUP.... 1ST DEFENDANT/RESPONDENT

ELIPHAZ INDIKA 2ND DEFENDANT/RESPONDENT

RULING

Coming up for hearing on 15th December 2003 was the Amended Chamber Summons application of 5th August 2003 filed on the same day. On the occasion of this ex parte hearing, the Plaintiff/Applicant began by making a secondary application for an amendment to the specification of authorizing law under the heading. The reference to Order XXIX had been intended to be to Order XXXIX, rules 1,2,3 and 9 of the Civil Procedure Rules. The main Application was also brought under Section 3A of the Civil Procedure Act, rule 3(2) of the High Court Vacation Rules made pursuant to the Judicature Act (Cap. 8, Laws of Kenya).

Counsel for the Plaintiff Applicant made a case for the supplementary application on the basis of the case, KARIUKI V COUNTY COUNCIL OF KIAMBU AND ANOTHER [1994] LLR 1981 (HCK). In that case the learned Judge, Keiwua, J cited with approval (P.2) from an earlier case, JOHN KARURI AND OTHERS V P. INVESTMENT PRIVATE LIMITED, Civil Case No. 1575 of 1991, in which Bosire, J. (as he then was) said:

“Order L Rule 12... to my mind deals with omissions to state the statutory provision under which or by virtue of which an Application is brought. However... it does not cover situations where a wrong or incorrect provision of the law is stated. When such is the case a party has the liberty to seek the leave of the Court to amend the application in that regard.”

Counsel submitted that Order VIA does have provisions for amendment; and he requested that the amendment be effected in this particular case, which request I acceded to and duly made the necessary change on the court file.

In the main Application the prayers sought were as follows:

- a. that this application be heard during the High Court Vacation;
- b. that the Defendants/Respondents through themselves, their servants or agents and/or successors in title be evicted from L.R No. 209/11241 Nairobi forthwith;

- c. that the court do make an Order directing the Defendants/Respondents through themselves, their servants or agents and/or successors in title to be evicted from L.R No. 209/11241 Nairobi;
- d. that the Court do issue an Order authorizing the Applicant through the assistance of the police to forcefully evict the Defendants/Respondents through themselves, their servants or agents and/or successors in title from L.R No. 209/11241, Nairobi;
- e. that the Court do authorize the Applicant to demolish the structures currently erected on the suit land by the Defendants/Respondents through themselves, their servants or agents and/or successors in title;
- f. that the Court's Orders be executed by the Commissioner of Police through his office and/or through officers directed through his office.

The factual basis of this Application was supplied by the affidavit sworn by R.T. Gacheche and filed on 4th August 2003. The deponent is a director of the Plaintiff company. He depones that at all material times, the Plaintiff was the registered owner of all that parcel of land known as L.R No. 209/11241 in Nairobi; he annexes a copy of the document of title. He states that, sometime about 2nd July 2003, the Defendants wrongfully entered the suit land, occupied the same, and have remained there. He states that the Defendants, after gaining ingress into the suit land, started demarcating the same, in defiance of requests not to do so. He says the Defendants have threatened and continue to remain in wrongful occupation of the suit land, and it has recently become necessary to lodge an administrative complaint with the District Officer in charge of the Embakasi area (document "RTG – 2" annexed). He depones that the Defendants' trespass has occasioned and continues to cause considerable inconvenience to the Plaintiff which, in consequence, has suffered damage. The deponent expresses apprehension that, without appropriate Orders of the Court, the Plaintiff is likely to suffer irreparable loss.

Counsel for the Plaintiff/Applicant observed that the Defendants/Respondents have filed no replying affidavit and therefore there is no factual basis on which their supposed claims can be assessed; all they have done is to file grounds of opposition in which they argue that the Application is incompetent.

Upon considering the documents filed by the Plaintiff/Applicant, and upon hearing the submissions of counsel, the following Orders are hereby made:

1. This Application shall be heard *inter partes* during the vacation, and to this intent the Plaintiff/Applicant shall effect service upon the Defendant/Respondents within the next three days;
2. This Application shall be heard *inter partes* on Tuesday, 30th December 2003 at 9.00 a.m.

DATED and DELIVERED at Nairobi this 22nd day of December 2003.

J.B OJWANG

Ag. JUDGE

Coram : Ojwang, Ag. J.

Court Clerk – Mutea

For the Plaintiff/Applicant : Mr. Njagi, Instructed by Waruhiu Kowade & Ng'ang'a Advocates

Defendants/Respondents - unrepresented