



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO. 1694 OF 1999

MORRIS GUCHURA NJAGE.....PLAINTIFF

versus

NATIONAL BANK OF KENYA LTD &

**KENYA NATIONAL CORPORATION LTD.....1ST
DEFENDANT**

**DAMARIS WANYAGA KIRAGU.....2ND
DEFENDANT**

**JAMES F.K. NGANGA.....3RD
DEFENDANT**

RULING

This is an application made under order XXXIX rule 3(2) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The applicants pray for an order that prohibitory orders filed and registered against L.R. No. Ngandorui/Kirigi/856 and Ngandori/Ngorio/165 by the respondents be lifted and discharged. They also pray for costs.

The respondent in the application is also the registered proprietor and the chargor of the suit premises while one of the applicants is the chargee.

It is not in dispute that there are no restraining orders all those injunctions that were issued by the court prior hereto in other suits having been discharged.

The application is opposed one of the issue that arises then is whether the application is properly before this court.

Order XXXIX rule 3(2) under which the application is made stipulates: 3(2) an ex parte injunction may be granted only once for not more than 14 days and shall not be renewable”

This is not an application for an injunction as it seeks to have set aside prohibitory orders and on that ground above the application is bound to fail.

Counsel for the respondent also took issues with the fact having come under order XXXIX rule 3(2), the applicant could only move the court by way of a notice of motion and not by way of a Chamber Summons as happened in the case. I am bound to agree with him on that line of submission specially in view of the fact that Chamber Application can only be made in cases where the court is moved under rules 1 & 2 of Order XXXIX otherwise in all other instances under the said order, it shall be by way of Notice of Motion. The same requirement would apply to applications brought that are under section 3A of the Civil procedure Act.

In view of the above, the application which is improperly filed in this court is hereby dismissed with costs.

Dated and delivered this 30th day of January, 2001.

JEANNE W. GACHECHE

COMMISSIONER OF ASSIZE

Delivered in the presence of Mr. Mariaria for the applicant. No appearance for the respondents