

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO. 494 OF 1998

TOM MBOYA MEMORIAL HALL DEVELOPMENT ASSOCIATION.....
PLAINTIFFS

-VERSUS

LUO COUNCIL OF ELDERS.....DEFENDANTS

R U L I N G

The Chamber Summons application under Order 1 Rules 10 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeks two substantive orders:

“I) THAT this Honourable Court be pleased to order that CHARLES ALIWI OPIYO and FARELLY OGOLA OTENGO trading as PAKA LAUNDRY & DRY CLEANER S be joined as 2 nd & 3rd Interested parties respectively in this suit.

ii) THAT, this Honourable Court be pleased to order the Defendants to refund the total sum of KSh. 137,940/= being the amount expended on leasing business premises at TOM MBOYA MEMORIAL HALL along Jomo Kenyatta Avenue, Mombasa. In the alternative

iii) THAT this Honourable Court be pleased to award the 2nd & 3 rd Interested Parties, damages for loss of the leasehold, business and or goodwill occasioned by the Defendants by ousting them from the premises of Tom Mboya Memorial Hall along Jomo Kenyatta Avenue, Mombasa.”

By an Affidavit sworn by MR. CHARLES ALIWI OPIYO on 25th May 2001, he says the 2nd and 3rd interested parties had leased the premises from the Plaintiff and has annexed a lease agreement in support thereof but were evicted by the Defendants on the 20/11/98.

The Defendants have apposed the application on the grounds that they were not a party to the said lease Agreement and the claim against them cannot subsist. The other argument raised herein are similar in all fours as those advanced in another application by the plaintiffs filed on 3/3/99 and on which the Court ruled that the issues raised therein should proceed to full trial. At the same time I note, the Court held that the legal standing as concerns the ownership of the suit premises is at this point unclear.

I have further noted that an earlier application by the 1st interested party to be joined in the suit was allowed by consent. In my view the issues raised in the current application are similar to those raised in the earlier application filed dated 12/2/99 and consequently I see no reason to deny them an opportunity to state their case at the same platform as the other parties herein.

However on the other prayer, having stated that the court had ruled earlier on that such issues had to proceed to hearing, I decline to grant the same. Let the parties convass the same at the full hearing herein. The application shall therefore succeed partially with costs to be determined in the cause.

DATED AT MOMBASA THIS 20TH JULY 2001.

P.M. TUTUI

COMMISSIONER OF ASSIZE

MOMBASA