



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 2230 OF 1991

NJUNO LTD. & 4 OTHERS.....PLAINTIFFS

VERSUS

MICHAEL NJENGA KAMAU & ANOTHER.....DEFENDANTS

RULING

The 2nd and 8th plaintiffs herein filed a Chamber Summons application under Order XXXIX rr. 1 and 2 of the Civil Procedure Rules seeking the following orders:-

- "1.THAT S. N. Mwaura his Co-directors, their servants and or agents be restrained from submitting the sub-division plan for parcel of land L.R 2930 situate in Nyandarua pending hearing and determination of this application to the Commissioner of Lands.
- 2.THAT the proposed sub-division plan submitted be nullified.
- 3.THAT the costs of this application be provided for".

This application is brought on the ground that the intended submission of the sub-division plan is in complete disobedience and defiance of court orders made by this Honourable Court and that failure to comply with the court orders will occasion injustice and deprive the shareholders their rightful shareholding.

This application was filed on 11th August, 2000 and on 24th August, 2000, Mr. Muira for 1st plaintiff filed grounds of opposition and notice of preliminary objection. The preliminary objection was argued on 22nd September, 2000. Mr. Muira sought the dismissal of the Chamber Summons application on the following grounds:-

- "1.The consent of all the parties named has not been sought or obtained.
- 2.One of the parties named as an Applicant died long time ago and there has not been any substitution.
- 3.There is no substantive suit between 1st Plaintiff and Co-plaintiffs.
- 4.The application has been overtaken by events in that the subdivision plan has been submitted, approved by the Commissioner of Lands and by the Company's shareholders during a Special General Meeting.

5.The Court is being asked to play the role of the majority shareholders who have no problem with the way the present Board is running the Company.

6.The application is an abuse of the Court process and is an outright effort to frustrate the present Board, elected by the majority shareholders.

Mr. Muira's main argument was that this matter had been overtaken by events since the plans have been approved and subdivision completed.

In answer to the above Mr. Gatimu for 2nd to 8th Plaintiffs stated that what has been done (subdivision) was in complete contravention of this court's order.

The way I understand this matter is that this court made certain orders on 29th July, 1999 which orders were not complied with. If that is the case then the question of an application for injunction does not arise. In the first place the subdivision which was intended to be stopped had already taken place. The proper procedure would have been an application to commit the party in contravention.

Looking at the main prayer in Chamber Summons application of 11th August, 2000, it is clear that this court would not entertain such an application. I am satisfied that the preliminary objection has merit. There is no way this court can entertain that application under Order XXXIX rr. 1 and 2 of the Civil Procedure Rules. The advocate for 2nd to 8th plaintiffs should reconsider the position of his clients very carefully.

In view of the foregoing, preliminary objection is upheld and the application is dismissed with costs.

Delivered and dated at Nairobi this 29th day of September, 2000.

E. O. O'KUBASU

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JUDGE OF APPEAL