



REPUBLIC OF KENYA

High Court at Machakos

Civil Case 211 of 2008

SALIM BIN MAHFUDH PLAINTIFF/DECREE HOLDER

VERSUS

1. JACKSON N MUSYOKI

**2. OLKEJUADO COUNTY COUNCIL DEFENDANTS
AND**

PETER KIMANI OBJECTOR/APPLICANT

RULING

The **Notice of Motion** dated 28/1/2013 is premised under **Section 1, 1B, 3, 3A and 63 (e)** of the **Civil Procedure Act Cap 21** of the **Laws of Kenya**, **Orders 22 Rules 51, 52, 53** and **Order 51 Rule 1** of the **Civil Procedure Rules Cap 21** of the **Laws of Kenya** and all other enabling provisions of the law.

The orders sought are:

- 1. (Spent)**
- 2. THAT pending *inter partes* hearing and determination of this application, this Honourable Court be pleased to grant a temporary stay of the order and decree dated 20th December 2007.**
- 3. THAT pending *inter partes* hearing and determination of this application, this Honourable Court be pleased to grant an order stopping the intended demolition of the Objector's Buildings erected on plot known as Noonkopir Trading Centre 86 A.**
- 4. THAT costs of this application be provided for.**

The application is supported by the affidavit of **Peter Kimani** the Objector and a co-administrator to the estate of the late **Lilian Wanjiru Magira**, his late mother who was the allottee of **plot No. 86A Noonkopir Trading Centre** situated within **Kitengela Township**. According to the said affidavit, the Objector, his late mother and/or the said property were not parties to the suit herein but were served with a notice of demolition by **Sadeque Enterprises Auctioneers** who were purporting to have been instructed to demolish the property erected on **plot No. 86A Noonkopir Trading Centre** at the same trading centre.

The Objector/Applicant also filed a further affidavit sworn on 16/2/2013 stating that the Plaintiff/Respondent sold the suit plot to his late mother in the year 1996. He further averred that he has the *locus standi* to institute these proceedings.

The plaintiff/Decree Holder filed the grounds of opposition dated 9/2/2013 on the following grounds:-

- (a) **The application is misconceived and brought in bad faith.**
- (b) **The Applicant/Objector has no locus Standi to bring this suit.**
- (c) **The Applicant/Objector has not shown the basis on which he claims the property he purports to claim.**
- (d) **The Applicant has not exhibited any title document to establish any nexus between himself, his mother's estate and the property.**
- (e) **The Application ought to fail for the above said reasons.**

During the hearing of the application, **Mr Matwere** instructed by **Nyandoro Company Advocates** appeared for the Objector/Applicant while **Mr Kimathi** instructed by **Arimi Kimathi and Company Advocates** appeared for the Plaintiff/Respondent.

In his submissions, **Mr Matwere** sought orders as prayed but abandoned prayer No. 2 of his application which is for Plot No. 86.

Mr Kimathi for the Plaintiff submitted that **Order 22 rule 51, 52 and 53** do not deal with land. He stated that **plot No. 86 A** which is the subject of the objection proceedings is not known to the plaintiff and does not belong to him and further that the orders dated 20/12/07 relate to **plot No. 86**.

The orders dated 20/12/2007 are very clear. The same are in respect of the **“the property known as Noonkopir Trading Centre/86”**. The Objector's application relate to **“plot known as Noonkopir Trading Centre 86 A”**. It was the applicant's responsibility to establish whether the No. **“86A”** and **“86”** relate to the same plot or not. Although the supplementary affidavit states that the Objector's mother bought the plot No. **“86A”** from the Plaintiff/Respondent, the Objector's documents which have been exhibited herein relate to plot No. **“86A”** and **plot No. 113/Bus-Noon Kopir Trading Centre**.

This muddled situation in the identification of the plot could perhaps explain why the objector's counsel abandoned prayer No. 2 of his application which was in relation to plot No. **“86”** while prayer No. 3 relates to plot No. **“86A”**.

In the end, the Objection proceedings relate to plot **No. 86 A** which is different from the one attached herein.

The Objection proceedings have no merits and I dismiss the same with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 11th day of April 2013.

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JUDGE