



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc Civil Appli 447 of 2006

DAVID NG'ANG'A MUNYUA 1ST APPLICANT

WILLIAM OCHUNG OCHICHI..... 2ND APPLICANT

V E R S U S

PROVINCIAL COMMISSIONER RIFT VALLEY.....1ST RESPONDENT

DISTRICT COMMISSIONER..... 2ND RESPONDENT

DISTRICT OFFICER BAHATI DIVISION..... 3RD RESPONDENT

THE CHIEF SOLAI LOCATION.....4TH RESPONDENT

R U L I N G

Before me is an ex-parte Chamber Summons dated 11th July, 2008 filed by Kamunye Gichigi & Burugu advocates for the applicants who are named as **DAVID NGANGA MUNYUA (1st applicant)** and **WILLIAM OCHUNG OCHICHI (2nd applicant)**. The respondents are named as **PROVINCIAL COMMISSIONER RIFT VALLEY (1st respondent)**, **DISTRICT COMMISSIONER NAKURU DISTRICT (2nd respondent)**; **DISTRICT OFFICER BAHATI DIVISION (3rd respondent)**; and **CHIEF SOLAI LOCATION (4th respondent)**.

The application was purported to be brought under section 5 of the Judicature Act (**Cap. 8**) Order 52 Rule 2 of the Supreme Court of England, Section 63(E) of the Civil Procedure Act (**Cap. 21**), and Civil Procedure Rules. It seeks the following orders,-

- 1. Leave be granted to the applicants herein to commence contempt of court proceedings against the four respondents herein.**
- 2. A return date be given for the hearing of the applicant's notice of motion for orders of committal.**
- 3. Costs of the application be in the cause.**

The application is grounded on a supporting affidavit sworn jointly by the two applicants on 11th July,

2008, as well as a **STATEMENT UPON WHICH LEAVE IS BEING SOUGHT** dated 11th July, 2008.

The main grounds of the application are that-

(i) ***On 11th August, 2006 this court granted leave to the applicants to apply for an order of prohibition to prohibit the respondents herein jointly and severally, their servants, anyone claiming authority under them from interfering with, evicting, destroying the applicant's properties taking possession thereof, trespassing or otherwise dealing with L.R. No. 10581 otherwise known as Solai/Ndungiri/Block 9 until the determination of this application.***

(ii) ***The four defendants are at all material times bound by the same orders.***

(iii) ***Formal order and notice of penal consequences was served on the four respondents on 15th August, 2006.***

(iv) ***The four respondents have breached the said order and are (in) contempt in that on 15th August, 2006 the second, third and fourth respondents together with hired personnel entered the suit land and then proceeded to demolish the applicants dwelling with a view to evicting them from the suit land.***

On 21st July, 2008, Nyamu J. ordered that the application be served on the Attorney-General. On 20th February, 2009, Mr. Omondi, State Counsel, appeared for the Attorney-General on behalf of the respondents. Hearing date was fixed for 23rd March, 2009. On 23rd March, 2009, when the application came up for hearing, the Attorney-General was not represented, and no explanation was given for the absence of the State Counsel. I proceeded to hear the application ex-parte.

The application is uncontested, though the Attorney-General was served, and a hearing date taken in the presence of a State Counsel. I find absolutely no reasons why I should not grant leave. I find that the applicants have an arguable case. The substantive matters will be determined after hearing the main motion.

I therefore allow the application and order as follows-

1. *Leave is hereby granted to the applicants to commence contempt of court proceedings against the four respondents herein.*

2. *The application for orders of committal will be filed within 14 days from today, otherwise the leave granted will automatically lapse.*

3. *The matter will be mentioned for directions on 27th May, 2009.*

4. *Costs in the cause.*

It is so ordered.

Dated and delivered at Nairobi this 5th day of May, 2009.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Mutungi holding brief for Ms. Natome for respondents

Kevin - Court clerk.