



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

Civil Case 73 of 2006

EMILIO MARANGU M'NDIIRI PLAINTIFF

VERSUS

ANJERO MUNENE MARINDI 1ST DEFENDANT

LAWRENCE ANTONY KINYUA 2ND DEFENDANT

FAITH NKINGA KABUCHA 3RD DEFENDANT

RULING

The plaintiff filed this action seeking a determination that he is entitled to land parcel Nos. MUTHAMBI/UPPER-KARIMBA/1598, 1599, 1600 and 1601 by operation of Limitation of Actions Act, by adverse possession. The plaintiff sought by chamber summons dated 15th January 2009 for orders of injunction against the defendants from entering interfering with the plaintiff's quiet possession of the suit properties.

He sought that an order of inhibition to issue in respect of the suit properties to step registration or dealing with those properties. That application is brought under Order XXXIX Rule 1 and 2. It is noteworthy that the plaintiff had filed another chamber summon, similar to the one under consideration, dated 2nd August 2006. That application related to parcel No. MUTHAMBI/UPPER KARIMBA/1279 which was the original title before it was subdivided into the titles of the suit properties.

The plaintiff on realizing that parcel No. 1279 was closed simply amended the Originating Summons to reflect the subdivisions and filed another Chamber Summons dated 15th January 2009 without finalizing with the one dated 2nd August 2006. That is blatant abuse of the court process for a party to have two similar pending application without one having been withdrawn.

The plaintiff's claim is that he has been in occupation of the suit properties since his birth and which is in excess of 12 years. The defendants in their replying affidavits deponed that the plaintiff entered into an agreement with the 1st defendant where-by the plaintiff had to relinquish his land, that is parcel No. 1279 to the 1st defendant.

The 1st defendant annexed an agreement relating to that alleged transaction. The plaintiff did not controvert that deposition of the defendants. In considering the prayers of the plaintiff in the Chamber Summons dated 15th January 2009, I am guided by the now accepted principles of granting an injunction. Those principles of granting an injunction are:-

- (1) *That the applicant has shown a prima facie case with a probability of success.*
- (2) *The injunction would not normally be granted unless the applicant stood to suffer irreparable injury or loss which could not adequately compensated by an award of damages, and*
- (3) *If the court is in doubt, the application would be decided on the balance of convenience. See Giella Vrs. Cassman Brown (1973) EA, 358.*

At this stage, I am aware that I cannot make any final determination of the issues raised by the parties hereof. This is because this is an interlocutory application. I have considered the arguments raised by the plaintiff and by the defendants. I make a finding that the plaintiff has failed to show a *prima facie* case with probability of success. I am of the view that the loss the plaintiff would suffer if an injunction is not granted is a loss that can be compensated by an award of damages.

The subject is land and therefore is capable of being valued and the plaintiff can be awarded damages equivalent to that value. In considering those principles of granting an injunction, I find that I have no doubt in respect of the first two principles. I accordingly will not consider where the balance of convenience lies.

In the end the orders of the court are:-

- (1) *That the Chamber Summons dated 2nd August 2006 is struck out for being an abuse of the court process with costs thereof being awarded to all the defendants.*
- (2) *The Chamber Summons dated 15th January 2009 is dismissed with costs to all the defendants.*
- (3) *That the interim orders issued on 19th January 2009 by this court in this matter are hereby vacated.*

Dated and delivered at Meru this 9th day of July 2009.

MARY KASANGO

JUDGE