



**IN THE COURT OF APPEAL  
AT NAIROBI**

**CIVIL APPLI NAI 169 OF 2005 (UR.103/2005)**

**JACOB JUMA ..... APPLICANT**

**AND**

**AGRICULTURAL FINANCE CORPORATION.....1<sup>ST</sup> RESPONDENT**

**THETA TEA COMPANY LIMITED .....2<sup>ND</sup> RESPONDENT**

**JENNIFER KOSSITANY .....3<sup>RD</sup> RESPONDENT**

*(Application for an injunction in an intended appeal from the ruling and the order of the High Court of Kenya at Nairobi Milimani Commercial Court (Mr. Justice Njagi) dated 13<sup>th</sup>*

*June, 2005*

**in**

**H.C.C.C. NO. 136 OF 2005)**

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**R U L I N G**

The applicant **J. Juma** filed a Notice of Motion on 21<sup>st</sup> June 2005 seeking an urgent injunction under **rule 4(2) (b)** of the Court of Appeal Rules (the Rules). The initial ex parte urgency application to a single judge (myself) under **rule 47(2)** of the Rules was declined by me and the issue as to urgency now comes before me for inter partes hearing under **rule 47(5)**.

The principal relief sought in the Notice of Motion is as follows:-

- 1. That an urgent injunction do issue forthwith restraining the respondents.... from dealing in any manner whatsoever with the suit premises known as L.R. No.12357....until the hearing and determination of the Applicant’s intended Appeal.**
- 2. That an urgent injunction do issue forthwith restraining the respondents... from interfering with the applicant’s possession of the suit premises and/or from evicting the Appellant .....from the suit premises until the hearing and determination of this suit.**

The facts asserted by the applicant as having given rise to the need for the interim injunction were, in summary, these:-

On **21<sup>st</sup> February 2003** the applicant entered into an agreement in writing to purchase the suit premises comprising approximately 100 hectares from the 2<sup>nd</sup> Respondent Theta Tea Company (**Theta**) for Shs. 9million of which Shs. 2 million was to be paid directly to **Theta** and Shs.7 million was to be paid directly to the 1<sup>st</sup> Respondent, Agricultural Finance Corporation (**AFC**) to which **Theta** was indebted.

On the same day, the **21<sup>st</sup> February 2003** the applicant paid the Shs. 2million to the 3<sup>rd</sup> Respondent, Jennifer Kositany (**Kositany**). This payment is denied by the latter.

The applicant asserts that in early April 2003 he arranged for a cheque for Shs.7 million to be delivered to **AFC** but that this was not accepted by **AFC** who claimed more was due to them.

The applicant went into possession as a purchaser on the **21<sup>st</sup> February 2003** and had been in possession and occupation of the farm on the suit premises, part of which comprised a tea plantation, since that date. The applicant claimed to have paid Shs. 2 million to the vendor (this is denied by **Kositany**) and to have spent Shs. 40 million by way of development of the farm which development included, inter alia, putting up a big residential mansion and constructing two dams. (This is denied by Theta's manager **D.K Bor** in his supporting affidavit and it is alleged by Kositany in her replying affidavit that all this development was already on the farm prior to the sale).

According to the applicant all this was done with the full knowledge and concurrence of the respondents.

The applicant alleges that on **23<sup>rd</sup> March 2005** a group of over 30 people invaded the suit premises claiming that they had been sent by the 3<sup>rd</sup> Respondent to take over the management of the applicant's farm. Three days later the invasion of the farm was reinforced by one Ezekiel Bargentuny a former member of Parliament and one Julius Margut who continue to occupy the applicant's tea estate.

The respondents on the other hand allege that the applicant left the farm eleven days earlier on 12<sup>th</sup> March 2005 and that his brother left the farm on 14<sup>th</sup> March 2005 since when the farm has been exclusively run by Bor.

On 11<sup>th</sup> March 2005 the applicant filed an application in HCCC No. 136 of 2005 for an interim injunction to restrain the respondents from interfering with the applicant's possession but it was not certified as urgent.

On 29<sup>th</sup> March 2005 another similar application was filed in the same suit following upon the alleged invasion of the farm on 23<sup>rd</sup> March 2005. This application was certified to be urgent and an interim restraining order was issued ex parte. The application was heard on 30<sup>th</sup> March 2005 together with a counter application filed by the respondents seeking similar relief against the applicant.

The decision of the High Court (Njagi J.) on those applications was made on **13<sup>th</sup> June 2005** dismissing the applicant's application and allowing the application of the respondents herein.

It is against that decision that the applicant is intending to appeal. The Notice of Appeal was lodged on 17<sup>th</sup> June 2005.

This dispute has many facets with numerous issues of fact and law to be established. I have considered carefully the only matter for decision by me which is as to whether there is need to certify the hearing of the applicant's application for urgent hearing bearing in mind as I do that the certification of this matter as urgent will lead to the postponement of some other appeal or application. I am not convinced that damage to the suit property is likely as the respondent will have no motive for not looking after it as she believes it to be hers. If the applicant ultimately succeeds in the suit he will be entitled to damages for any damage proved to have been suffered by him and it is not suggested that the respondents will not be able to pay such damages if any.

My conclusion is that this application is not sufficiently urgent to qualify for the certificate sought and I hereby decline to certify the hearing of the Motion dated 21<sup>st</sup> June 2005 as urgent. The costs of this hearing inter partes shall be in the said Motion.

*Dated and delivered at Nairobi this 27<sup>th</sup> day of September, 2005.*

**W. S. DEVERELL**

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**JUDGE OF APPEAL**

I certify that this is a true Copy of the original.

**DEPUTY REGISTRAR**