



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

**E.L.C. NO 82 OF 2014**

**JEMIMAH KIURA ZAFANIA.....PLAINTIFF**

**VERSUS**

**WAMBU GATUMU.....DEFENDANT**

**RULING**

**INTRODUCTION**

By her notice of motion dated 9<sup>th</sup> October 2014, the plaintiff/applicant has applied to this court for a temporary injunction to stop the defendant/respondent from disposing, alienating and/or anybody else from dealing with land reference number Mbeere/Mbita/4783 pending the hearing of the main suit. In support of that application, the plaintiff/applicant has attached a supporting affidavit.

The defendant/respondent was served with the notice of hearing of this motion. An affidavit of service dated 11<sup>th</sup> November, 2014 was duly filed which showed that the defendant was served with a hearing notice. He did not attend the court for the hearing of this motion. The hearing therefore proceeded in his absence.

**The Case for the Plaintiff/Applicant**

According to the plaintiff/applicant, she was the owner of the suit land which was part of land parcel number Mbeere/Mbita/227. She has stated that this parcel of land has been subdivided into the following parcels of land:

1. Parcel number Mbeere/Mbita/4783 which is now registered in the name of the defendant/respondent.
2. Parcel number Mbeere/Mbita/4782 which is still in her name.

It is her evidence that they had agreed that the plaintiff would exchange her portion of land with a portion of the defendant. She says that the defendant/respondent has refused to exchange his piece of land with that of the plaintiff.

She further fears that the defendant will alienate the suit land in breach of the original agreement.

**The Applicable Law:**

The law governing the grant of temporary orders is set out in *Order 40 of the Civil Procedure Rules of*

**2010.** In terms of those provisions, the court is authorized to issue a temporary injunction to preserve the status quo pending the hearing and determination of the suit. This is particularly so where it is shown that there is danger that the suit land may be disposed off before the main suit is heard. The plaintiff has met the evidentiary threshold for the grant of a temporary injunction.

**Verdict and Disposal Order:**

In the light of the foregoing:

1. The plaintiff/applicant is hereby granted the order in terms of prayer 2 of her notice of motion.
2. Costs of this application shall be costs in cause.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **.....10<sup>th</sup> .....**day of **.....December,....2014**

In the presence of

The plaintiff/applicant and in the absence of the defendant/respondent

Court clerk Mr Muriithi

Right of Appeal explained under Order 43 of Civil Procedure Rules 2010 inter-parties.

**J.M. BWONWONGA**

**JUDGE**