



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 264^A OF 2012

**ALICE MWIHAKI
 KIARIE.....
PLAINTIFF**

VERSUS

**ABED KYUNGUTI MULEE.....
1ST DEFENDANT**

**JAFER MUSTAPHA.....
2ND DEFENDANT**

**SIRAT MOHAMMED SALAT.....
3RD DEFENDANT**

**THE ATTORNEY GENERAL (SUED FOR AND ON BEHALF OF THE LAND REGISTRAR)
4TH DEFENDANT**

RULING

1. The application dated 19th June, 2012 is brought pursuant to Order 40 rules 1, 3 and 4 of the Civil Procedure Rules; Section 3A and 63(e) of the Civil Procedure Act and all enabling provisions of the law.
2. It seeks orders as follows:-

“a) That a temporary injunction do issue restraining the 4th defendant and Land Registrar, Kajiado either in person or any person working under him/her whomsoever from dealing, interfering, registering any instrument, varying any instrument, alienating and or in any way dealing with the parcel of land known as KJD/Kaputiei-North/7645 pending the hearing and determination of this application.

b) That a temporary injunction do issue restraining the 4th defendant and Chief Land Registrar, Kajiado either in person or any person working under him/her whomsoever from dealing, interfering, registering any instrument, varying any instrument, alienating and or in any way dealing with the parcel of land known as KJD/Kaputiei-North/7645 pending the hearing and determination of this suit.

c) ***That cost of this application be provided for***”.

3. It is premised on grounds that:-

- a. ***That the plaintiff is the registered owner of property land Parcel No. KJD/Kaputiei-North/7645 and the title was issued to her on 3rd April, 2000.***
- b. ***That the 4th defendant has issued separate titles over the same land to the 2nd defendant and subsequently to the 3rd defendant without the consent of the plaintiff.***
- c. ***That the defendants have perpetrated frauds with intent to disowning he plaintiff off the aforesaid parcel of land.***
- d. ***That the plaintiff stands to suffer irreparably if any actions by the 2nd defendant are taken***”.

4. The application is supported by an affidavit sworn by **Alice Mwhaki Kiarie** the Applicant herein where she states that having purchased the subject land she was issued with a title deed on 3rd April, 2000. In the year 2006 she intended to sell the land. She instructed the 1st Defendant an agent to find her a buyer. She entrusted him with a copy of the title deed and showed him the location of the property.
5. Having failed to contact her, she carried out a search at the land registry only to find that her property had been transferred to the 3rd defendant by the 2nd defendant whom a new title deed had been issued to.
6. The Respondents herein were notified of the suit and application by way of substituted service in the Daily Nation of Wednesday May, 8, 2013. They failed and or neglected to file a response. The 4th defendant was again served with a hearing notice. It was duly received but he opted not to respond.
7. In order for an injunction order to issue, as held in ***Giella versus Cassman Brown and Co. Ltd E.A. 358*** the Applicant must show a *prima facie case* with a probability of success and that the applicant might suffer irreparable injury incapable of being compensated by an award of damages. And, if the court is in doubt then the matter should be decided on a balance of convenience.
8. The Applicant herein has a title deed for the Number KJD Kaputiei-North/7645. The title was issued on 3rd April, 2000. Without evidence that she disposed of the land she indeed has beneficial interest in the property. In the circumstances, she has a *prima facie case* with a probability of success. She cannot be doubted when she avers that she will suffer irreparable loss.
9. In the circumstances, I do issue a temporary injunction restraining the 4th defendant, representing the Land Registrar and his representatives from dealing with or registering any instruments in respect of land title KJD/Kaputiei-North/7645 pending hearing and determination of the suit.
10. Costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at MACHAKOS this 24TH day of SEPTEMBER, 2013.

L.N. MUTENDE

JUDGE