



**PAULINE MUTEE  
MAKUMU ..... PLAINTIFF**

**VERSUS**

**URSULA KRESZENTIA MONIKA HERKENATH ..... 1<sup>ST</sup>  
DEFENDANT**

**PETER JURGEN HERKENRATH ..... 2<sup>ND</sup>  
DEFENDANT**

**RULING**

(1) The Plaintiff sought an order for injunction to restrain the Defendants from evicting her from the suit premises based on her claim to specific performance of an alleged agreement for transfer of the suit property through a Deed of Agreement of 27<sup>th</sup> October 2003. The Defendants have denied the alleged sale agreement and counter-claimed for a declaration that the said Deed of Agreement is null and void for misrepresentation and in any event did not amount to a transfer of the suit property but rather an assignment of interest in a named business on the suit property whose terms the Plaintiff allegedly failed to honour. The Defendants consequently seek an order for vacant possession of the suit property and an interlocutory injunction to restrain the Plaintiff from dealing with the premises pending the hearing of the suit. The two counter applications were heard together by way of written submissions and ruling reserved for the 15<sup>th</sup> December 2011. On account of heavy workload and intervening official engagements out of court, I have not before now been able to deliver the ruling and the delay is much regretted.

(2) As I prepared the ruling in the applications, delivery of which I had scheduled for 23<sup>rd</sup> August 2012 notice whereof to be given to the parties, I was informed by the Chief Magistrate Mr. Stephen Riechi of Mombasa Law Courts that the situation on the ground with regard to the suit premises herein had been drastically altered by the eviction of the Plaintiff from the suit property. I was referred to a report in the Daily Nation of 30<sup>th</sup> July 2012.

(3) According to the Press Report, the Defendants herein had apparently transferred the suit property to a third party who had sought and obtained an order for eviction of the Plaintiff's tenants and the suit property from the Senior Resident Magistrate's Court, Mombasa. The order was reported to have been made on the 24<sup>th</sup> July 2012 and executed by eviction of the tenants from the suit property on the 28<sup>th</sup> July 2012.

(4) I bear in mind the provisions of Article 159 of the Constitution that it is the duty of the court to do justice in every case without regard to technicalities of procedure. Although I cannot take into account the information received from Press Reports or other information received outside the course of proceedings, in determining the applications pending before the court, I may take these into consideration in arriving at suitable directions as to the disposal of the matter. No court should act in vain and if the court is made aware that the situation on the ground has been altered, an order for injunction relating to the status quo at the time of the application may be in vain as it has already been overtaken by events.

(5) In the circumstances and towards the effective disposal of the dispute between the parties, I direct that the parties appear before the court on such a date as is convenient to the parties and the court for purposes of taking further submissions from the parties with regard to the pending applications having regard to the situation currently obtaining on the suit property.

(6) The Plaintiff is at liberty to make any necessary consequential application arising from the alleged alteration of the status quo on the suit property, which the court had ordered to be maintained by consent

of the parties on the 17<sup>th</sup> October 2010 and subsequently extended from time to time pending the determination of the applications.

(7) The parties are at liberty to seek the full hearing of the dispute on the merits and to prepare the suit towards such hearing rather than the further hearing of the interlocutory applications for injunction. The costs of the applications will then abide the outcome of the full trial.

**Dated and delivered this 31<sup>st</sup> day of August 2012.**

**EDWARD M. MURIITHI**  
**JUDGE**

In the presence of:

Mr. Ndegwa for Sionik for the Plaintiff

Mr. Mulwa for the Defendants

Mr. Obart – Court Clerk