

“The plaintiff/applicant now demands compensation from the defendants a total sum of Kshs.3,389.00 being special damages Kshs. 1,389,583.00 for her developments and other damages a total of Kenya shillings 2 Million”

The suit property has changed hands two times. The first was the gift to the 1st defendant by the 3^d defendant and the second is the sale from the 1st defendant to the 4th defendant. The 3rd defendant was the registered proprietor. He had no duty, legal or otherwise, to consult anybody before gifting the land to the 1st defendant who is his daughter. He was free under Section 27 of the Registered Land Act Cap 300 Laws of Kenya, to deal with the land in any manner he wished and there is no evidence that he held this title in trust for any person.

The 4th defendant appears to be an innocent purchaser for value without notice. He acquired a good title from the 1st defendant and there is no evidence that he was involved in any fraud relating to that transaction.

The plaintiff has a duty to establish a prima facie case with a probability of success and show that, if the orders are not issued in her favour, she is likely to suffer irreparable loss that may not be compensated by an award of damages. The facts she has pleaded in the plaint and for reasons that she has no registerable interest in the suit property lead the court to find she has not established a prima facie case with a probability of success. The plaintiff has particularized her claim for damages. In effect she has pleaded herself out of the principles set out in the case of **Giella vs Cassman Brown and Company Limited (1973) EA 358**. She has not alleged that either the 1st defendant or the 4th defendant are incapable of compensating her in the event that she succeeds in this suit.

I am unable to uphold her claim for injunction orders and therefore the application dated 15th October, 2010 is hereby dismissed. It follows that the 4th defendant’s application dated 31st January and filed on 3rd February, 2011 succeeds. The interim orders are therefore discharged. The defendants shall have the costs of this application as against the plaintiff.

Orders accordingly.

Dated, signed and delivered at Nairobi this 5th Day of July, 2011

**A. MBOGHOLI MSAGHA
JUDGE**

In the presence of