

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 203 of 2007

**PERIS NJERI THUO (Suing as the legal rep. of
the estate of the late THUO NGANGA BORO.....PLAINTIFF**

VERSUS

HANNAH WANJIKU MUNGAI.....DEFENDANT

RULING

This is an application by the plaintiff under **Order 39 Rules 1, 2, 3 and 9** of the **Civil Procedure Rules** as well as **Section 3A** of the **Civil Procedure Act**. In it the plaintiff seeks an injunction to restrain the defendant by herself her servants and or agents from entering, tilling, planting and or in any other way dealing with the piece of land known as **Molo South/Ikumbi Block 8 (Haraka)/120**. In her affidavit in support of the application, the plaintiff claims that by a written agreement to which she was a witness, her deceased husband sold the land to one Esther Chepngeno Soi. The defendant has without any colour of right purported to lease that land to one Samuel Sang thus causing the said Esther Chepngeno Soi to claim a refund of the purchase price from her. She therefore seeks the above stated order of injunction.

In her replying affidavit the defendant has annexed a copy of the Title Deed for the land in her name and prayed for the dismissal of this application. Her counsel has argued that this suit has no probability of success as the plaintiff is suing on behalf of a stranger.

I have considered these submissions and read the pleadings. The defendant's claim that she is and has been in possession of the suit land for a long time has not been disputed by the plaintiff. I therefore agree with Mr. Karanja for the defendant that if granted, the order of injunction will cause the eviction of the defendant from the suit piece of land. I also agree with him that the plaintiff is purporting to urge a third party's claim. In the circumstances I dismiss this application with costs.

DATED and delivered this 27th day of January 2010.

**D. K. MARAGA
JUDGE.**