



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**Civil Suit 302 of 2009**

**1. MARTHA WATHOME MULWA**  
**2. KYAA MULWA .....PLAINTIFFS**

**VERSUS**

**STEPHEN NZUKI MWANIA .....DEFENDANT**

**R U L I N G**

The Plaintiffs filed suit herein claiming that they had rescinded the contract of sale between them (as vendors) and the Defendant (as purchaser) in respect to a parcel of land. The agreed purchase price was KShs. 5,850,000/=. KShs. 1,000,000/= was paid. The Plaintiffs plead that the Defendant was in breach of the sale agreement. The relief sought is a declaration that the Plaintiffs have lawfully rescinded the contract of sale, and for the Defendant to be ordered to return the documents of title deposited with him.

It appears that defence may not have been filed as yet; the Defendant may not have been served with summons to enter appearance.

Together with the plaint the Plaintiffs filed an application by **chamber summons dated 6<sup>th</sup> October 2009**. They seek the main order that the Defendant be restrained from subdividing, alienating or disposing of any interest in the suit parcel of land, **L.R. No. Mavoko Town/Block 2/9763**, pending disposal of the suit. The averments contained in the plaint are repeated in the supporting affidavit. In addition, the sale agreement is exhibited together with some correspondence between the parties.

The Defendant has opposed the application by **replying affidavit filed on the 15<sup>th</sup> October 2009**. He admits the sale transaction but alleges that it is in fact the Plaintiffs who were in breach of the sale agreement. He further pleads that he is able and willing to complete the sale as soon as the Plaintiffs comply with certain terms of the sale agreement.

The Defendant also raised a preliminary objection to the application by notice dated 16<sup>th</sup>

October 2009. The point raised therein is that the application has no foundation in law to warrant issuance of temporary injunction in that no permanent injunction is sought in the plaint.

I have considered the written submissions filed on behalf of the parties. The parties have blamed each other for breach of the sale agreement. The issue as to who is at fault in regard to non completion of the sale will have to await trial of the action. That issue cannot be fully and properly adjudicated in the present interlocutory application.

It cannot be in doubt that it is desirable and convenient, and also in the interest of justice, that the suit property, which is registered in the names of the Plaintiffs but is in possession of the Defendant, be preserved pending disposal of the suit. The purpose of the present application is to do just that.

In the circumstances I will allow the application. There will be a temporary injunction in terms of prayer 2 of the chamber summons dated 6<sup>th</sup> October 2009. This injunction is granted subject to the condition that the Plaintiffs shall, within 14 days of delivery of this ruling, file an appropriate undertaking as to damages. Costs of the application shall be in the cause. It is so ordered.

**DATED AND SIGNED THIS 28TH DAY OF APRIL 2010**

**H.P.G. WAWERU**  
**JUDGE**

**DELIVERED THIS 30TH DAY OF APRIL 2010**