



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Case 41 of 2008**

**JANE WANGITHI NGIRI.....PLAINTIFF**

**VERSUS**

**SAMSON MAGANJO GATEI.....DEFENDANT**

**RULING**

The application is dated 16/9/2008. The same is premised on order XXXIX R. 1 of the Civil Procedure Rules Section 3 A and 63 (c) of the Civil Procedure Act. I wish to state that the inclusion of Section 3A C.P.A was Otiose but it does not warrant the dismissal of the application as submitted by counsel for the Respondent herein. The applicant seeks an order of injunction against the Respondent, his servants, agents etc from interfering in any manner with parcels of land **No. MWEA/TEBERE/ B 616,624 and 625** pending the determination of the main suit. The same is supported by the grounds on its face and the applicant's affidavit dated 16/9/2008. It is opposed vide the grounds of opposition dated 26/9/2008. I have considered the said grounds, affidavit and the law applicable in this matter. I have also considered both counsels' oral address to court. I note that there is no annexure by either party to show that the plots in question exist and if they do, who the registered owner is. This on its own makes the application a non-starter. A party seeking injunctive orders must first and foremost establish that he/she has a good case (or prime facie case) with a probability of success. That is the starting point. In this case, the plaintiff/applicant has dismally failed to establish that she has a prime facie case. She has failed to show that the plots in question belonged to her late husband at any one time. She has even failed to show that the same are now registered in the names of the respondent. She has not laid any basis whatsoever for her claim. Her application must therefore fail. I find the same devoid of merit and dismiss it with costs to the Respondent.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 17th day of June 2009.

**In presence of:- Mr. Maina and Mr. Munene for the parties.**

**W. KARANJA**

**JUDGE**