



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**Civil Case 28 of 2007**

**WANGARI NDERI IMWE.....PLAINTIFF/APPLICANT**

*Versus*

**EPHRAIM MUNDIA NDERI.....DEFENDANT/RESPONDENT**

**RULING**

The Applicant has brought before Court an application by way of Chamber Summons dated 18<sup>th</sup> April 2007. That application is brought under *Order XXXIX Rules 1, 2 and 9* of the Civil Procedure Rules. The Applicant seeks injunction against the Defendant stopping the transferring or selling or disposing of title KIRIMUKUYU/MBOGO-INI/970 and 963. The Applicant deponed in the affidavit in support that KIRIMUKUYU/MBOGO-INI/728 was registered in the Defendant's name by the parties' late father to be held by the Defendant in trust for the Plaintiff/Applicant. The Applicant deponed that the Defendant was the eldest son and the most educated member of the family and that at the time the Applicant was unmarried. She deponed that their late father gave her one acre of the said land. She therefore stated that the Defendant holds that one acre in trust for her. Subsequently the Defendant sub divided the original title into several portions namely parcels Nos. 963, 964, 965, 966, 967, 968, 969 and 970. The Applicant stated that her house has fallen partly on property 963. The Defendant has sold several of those plots and has only five remaining. The Applicant requested the Defendant to transfer to her one acre comprising of parcels No. 963 and 970 but that the Defendant has refused. She therefore concluded by saying that the Defendant if not restrained might sell all the parcels of land leaving her landless. When the matter came up for hearing inter partes the Defendant had not filed any papers in opposition. The Defendant therefore did not go on record as opposing the application. It ought to be noted that when the matter first came for inter partes hearing the Defendant was granted leave to file his replying affidavit within three weeks. When, however, the matter came up again for hearing that replying affidavit had not been filed. There is therefore no opposition to the Applicant's application.

I have considered the application and I find that it satisfies the principles of granting an injunction as enunciated in the case of *GEILLA -V- CASSMAN BROWN & CO. LTD.* [1973] E.A. 358.

Those principles are as follows:

*“An applicant must show a prima facie case with a probability of success; an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury; when the court is in doubt, it will decide the application on the balance of convenience.”*

The Applicant has shown that she has a *prima facie* case with a probability of success in that she has averred in her plaint that there is a trust which was created by her father in respect of parcel No. 728. For that reason the Court does not hesitate to grant the Applicant the orders sought. The Court grants the following order:

That an order of injunction is hereby issued until the final determination of this suit against the Defendant restraining him either by himself, his servants, employees and/or agent from alienating, transferring, selling or disposing in any way title No. KIRIMUKUYU/MBOGO-INI/963 and 970. The Applicant is also granted costs of the Chamber Summons dated 18<sup>th</sup> April 2007.

*Dated and delivered at Nyeri this 30<sup>th</sup> day of July 2007.*

**MARY KASANGO**

**JUDGE**