



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 185 OF 1999**

**ROSEMANY KINANU MUGAMBI.....PLAINTIFF**

**=V E R S U S=**

- 1. OBUTU OSORO t/a CHARTERED UNILEVER.....1ST DEFENDANT**
- 2. BENARD OTOYO ODUOR.....2ND DEFENDANT**
- 3. LYDIA WANJIRU.....3RD DEFENDANT**
- 4. REGISTRAR OF TITLES (MSA DISTRICT).....4TH DEFENDANT**
- 5. JAME WAWERU GICHUHI.....5TH DEFENDANT**
- 6. REGINA WACHUKA WAWERU.....6TH DEFENDANT**

**R U L I N G**

Application dated 11/12/03 was filed by the Plaintiff on the same date. The application came up for hearing on 5/3/2004.

The prayer for argument on that day was only prayer (c) seeking to restrain the 5th and 6th Defendants from dealing with Plot No. LR No.MN/1/6642 from building thereon or erecting any structures or any constructions pending the final determination of this suit.

The grounds are set out on the body of the application and supporting affidavit.

From the material before the court the Plaintiff/Applicant relies heavily on allegations of fraud. That she purchased the disputed land property and by fraudulent acts the title passed to other persons (Defendants) on 26th April, 1999 the Plaintiff obtained a restraining order from this court (Justice Hayanga) restraining the first 4 Defendants from dealing with the property.

Again on 3.5.2000 a consent of the parties were recorded restraining the Defendants from interfering with the disputed property. However, on 8/12/03 the 5th and 6th Defendant were registered as owners of the said disputed plot.

I have perused the replying affidavit of J.W. Gichuhi and the defence filed by 5th and 6th Defendants. I find that the Plaintiff has a strong case which should go for trial.

Where issues of fraud are concerned no amount of damages can be adequate compensation for leasing the title to land in this country. If fraud is proved there would be no title left to the fraudsters to sell. By

purporting to sell what is not theirs they are reaping where they have not planted. The court cannot assist wrong doers.

In view of the fact that the court had restrained sale and also parties by consent had agreed not to deal with the property pending hearing and determination of the suit.

There can be no excuse for them abandoning the court order and their own agreement and proceeding to sell and transfer property to 5th and 6th Defendants.

The application is allowed and orders granted as prayed under para. C of the Chamber Summons.

Costs shall be in the cause.

**Dated this 4th day of June, 2004.**

JOYCE KHAMINWA

J U D G E

Mr. Were – for 5th & 6th Defendants:-

I apply for certified copies.

COURT:- Let the same be supplied upon payment of copying charges.

JOYCE KHAMINWA, J.