



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL CASE 895 OF 00**

**ESTHER JONATHAN NGUMBI .....PLAINTIFF**

**v e r s u s**

**MTITO ANDEI TOWN COUNCIL**

**THE REGISTERED TRUSTEES .....DEFENDANTS**

**DELIVERANCE CHURCH**

**PASTOR SHADRACK MAKAU**

**R U L I N G**

I am to determine the Chamber Summons dated 12th June 2000 which seeks the restraining order against all the three Defendants not to interfere with the Plaintiff's use and enjoyment of Plot No. 18 Mtito Andei Township, Makueni District pending the determination of the suit filed by way of Originating Summons. The affidavit sworn by the Plaintiff in the said suit on 12th June 2000 is relied upon by the Plaintiff to support the said application.

The suit is praying for declaration that the Plaintiff is entitled to Plot No. 18 Mtito Andei Town Council by reason of adverse possession and for permanent injunction amongst other prayers for determination of several issues. In short the Originating summons is mainly filed under Section 38 of the Limitation of Actions Act (Cap 22).

Mr. Kitulu wholly relied on the affidavit of the Plaintiff. I have gone through her affidavit with all the enclosures. Without specifying the year of the commencement of her occupation, she avers that she has been the occupation of plot now known as Plot No. 18 since last 14 years. Then she avers that on 10th April 1985 she and her husband bought two plots from one Munyambu Kangale and has detailed the area and location of those plots. Annexure EJN1 does not mention the location or the area. I am afraid the original agreement in Kiswahili does not mention the Plaintiff Esther Ngumbi to have signed for purchaser as mentioned in the translation thereof as well as Maingi (Kanzala Councillor has not signed the original agreement. As per the Plaintiff the 1st defendant i.e Mtito Andei Town Council at the Plaintiff's request sub-divided the said plot and created a plot no. 367 meaning 140 feet by 87 feet which was sold to one Justus Munyao Kyungu by the Plaintiff. So far the Plaintiff does not seem to have problem. She further states that the remaining undeveloped area of 130 feet by 70 feet has been allocated plot no. 18 by the 1st Defendant which now is averred to have been purported to be allocated to the 2nd Respondent herein. The Plaintiff has produced a receipt no. 249 of 5th July 1999 for the transfer of plot no. 134 in her name but avers that it is a forgery, though no detail is given to support such averments. There is nothing on the record of this suit to show that the remaining balance of the averred plots occupied by the Plaintiff was given plot no. 18. As a matter of fact as late as 3rd September 1999 the Counsel for the Plaintiff has written a demand notice (Ann. EJM 8) stating that plot no. 134 is owned by the Plaintiff and that the Defendants should not interfere with its possession by the Plaintiff. In paragraph 9 of her affidavit she denies to be the owner of plot number 134 when the Council issued her with notice to pay the rent on or before 4th June 1999.

As per the annexure EJM 4, the Plaintiff's husband is stated to be the owner of plot no. 367 in the year

1995, which as per the Plaintiff, was sold by her to one Justus Munyao Kyungu in the year 1992.

The Plaintiff has thus made contradictory averments which are relevant for the determination of the application for interlocutory orders. The existence of plot no. 18 is not shown and the Plaintiff herself has written to the 2nd Defendant to desist from trespassing on plot no. 134 as observed by me earlier.

I am thus unable to find that the plaintiff has made a prima facie case with probability of success. In the premises, I have to direct that the application dated 12th June 2000 be dismissed. As the Defendants did not appear I am not making any order as to costs.

DATED at NAIROBI this 20th day of July 2000.

**K.H. RAWAL (Mrs)**

**JUDGE**