



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC 32 OF 2013**

**KIPENTES OLE ORKONEE.....PLAINTIFF**

**VERSUS**

**BENSON S. KERINA**

**T/A KERINA & CO. ADVOCATES.....DEFENDANT/RESPONDENT**

**RULING.**

The Applicant filed an application dated 21/12/2012 seeking orders that:

1. Spent
2. Spent
3. The Defendant herein be restrained from handing over the title deed to any other person other than the Plaintiff or his agents or handing over the title deed L.R. No. Kajiado/Kaputei –South /3122 or dealing with the said title deed in any manner pending the hearing and determination of this suit.
4. Spent
5. The Land Registrar Kajiadobe ordered not to effect any transfer, charge or carry out any other transaction relating to the Plaintiff's L.R. No. Kajiado/Kaputei –South /3122 without the Plaintiff's express authority or consent until the hearing and determination of the suit.
6. Spent
7. Cost of the application be borne by the Respondent.

The application is premised on the grounds that the Applicant is registered as the absolute proprietor of all that parcel of land known as L.R. No. Kajiado/Kaputei –South /3122 situate in Emali area within Kajiado County (*hereinafter referred to as the suit property*). The Applicant engaged the services of the Respondent on 28/2/2012 wherein he entered into a sale agreement with one Anna NonkipaKetinyioSundai. The Respondent's law firm acted for both the purchaser and vendor in the conveyance and as such obtained all the necessary documents to effect completion of the conveyance including the title deed to the suit property. The Applicant contended that himself and the purchaser entrusted the Respondent to complete the conveyance within the stipulated time as per the sale agreement but that as at August 2012 the Defendant refused/neglected to effect completion. The Applicant has demanded the title deed from the Respondent without any avail as the Respondent has neglected to release the said title deed to the Applicant. Thus the Respondent's action is illegal and goes against the rules of natural justice.

The application is supported by an affidavit sworn on 21/12/2012 by the Applicant wherein he reiterated the contents of the application. The Applicant annexed documents in support of his application, including: A copy of Sale Agreement dated 28/2/2011 marked "KOON1", and two copies of the demand letter addressed to the Defendant marked "KOON2 & 3".

Service of this application and the hearing notice was effected upon the Respondent's last known address. There is a return of service sworn on 14/3/2013 by Japheth Kabogoi who deposed that he is a licensed court process server. Despite such service, the Respondent has failed to file a response to this application. Consequently, the application proceeded *ex-parte* when it came up for hearing.

The issue to be determined at this interlocutory stage is whether the Plaintiff has demonstrated a case to warrant the grant of injunctive orders against the Defendant. The factors to be considered by a Court in an application for an interlocutory injunction are well settled. The Court of Appeal for East Africa in the case of **Giella v Cassman Ltd (1973) EA 358** gave three requirements. Firstly, an applicant has to demonstrate a *prima facie* case with probability of success. Secondly, an injunction will not normally be issued unless the applicant will otherwise suffer irreparable loss which cannot be adequately compensated in damages. Thirdly, if the court is in doubt, it will decide the matter on a balance of convenience. The Plaintiff has demonstrated that he is the proprietor of the suit property. The annexures support his claim of handing over the title documents to the Defendant for purposes of carrying out a conveyance between the Plaintiff and a third party. It is the Plaintiff's contention that the Defendant has declined to effect the conveyance yet he is still in possession of his original title deed. The Plaintiff is thus apprehensive that the Defendant is likely to dispose off the said property without his knowledge and consent.

From the foregoing, it is the view of this Court that the Plaintiff has established a *prima facie* case with high chances of success. The Court also finds that the Plaintiff is likely to suffer irreparable loss that may not be adequately compensated by damages if the Defendant without the Plaintiff's consent alienates the suit property in any way, being in possession of the original title documents. Lastly, this Court is not in doubt, and even if it were, the balance of convenience would tilt in favour of the proprietor of the suit property.

In the circumstances, I find that the application herein is merited and therefore allowed in terms of prayers 3 and 5 of the application. Costs shall be in the cause.

Dated, Signed and Delivered this 2<sup>nd</sup> day of **May** 2014

**L.N. GACHERU**

**JUDGE.**

In the Presence of:-

.....For the Plaintiff/Applicant

.....For the Defendant/Respondent

..... Court Clerk