



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Civil Suit 51 of 2011

RUTH NJOKI MWAURA.....PLAINTIFF

VERSUS

LUCAS NG'ANG'A.....1ST DEFENDANT

PASTOR DANIEL MAINA 2ND DEFENDANT

RULING

1. The principles guiding the grant of interlocutory injunctions were enunciated in the famous case of **Giella v Cassman Brown Co. Ltd.** An applicant must satisfy the court that:

- a) He has a prima facie case with a probability of success.
- b) He will suffer irreparable damage if the injunction order is refused.

If the court is in doubt, it will look at the balance of convenience.

2. Several key facts are not in dispute. The plaintiff and the second defendant were joint purchasers of plot no. 87 Mpeketoni which was subdivided into part A and B. The plaintiff took the latter portion while the 2nd defendant took the former. Subsequently, the 2nd defendant sold his portion to the 1st defendant.

3. The plaintiff now complains that the 1st and 2nd defendants prevailed upon her to sign an agreement with the 1st defendant by which she exchanged plot 7B with the 1st defendants' plot no. 103 Mpeketoni. She claims that the two defendants took advantage of her age and illiteracy to take away her plot.

4. In their replying affidavits the defendants have sought to explain the circumstances in which the exchange occurred. They assert that the exchange agreement was transparent free and witnessed by several persons; that the plaintiff's family participated in the discussions surrounding the exchange and

that the local administration confirmed that the new plot was to go to the plaintiff.

5. Although the plaintiff's application appears to allege fraud against the defendant, the plaintiff does not contain any averment to that effect. The plaintiff asserts the alleged discovery that plot 103 Mpeketoni did not belong to the 1st defendant.

6. The defendants have denied fraud, and coercion and for his part, the 1st defendant has demonstrated how he acquired the plot no. 103 Mpeketoni. There is no evidence to controvert his claims to the ownership of that plot, and secondly, the plaintiff's allegations to have been coerced are sorely tested by the contents of the two replying affidavits. Besides, her initial pleadings do not suggest any coercion or fraud. It is not clear whether the plaintiff has attempted to take possession of plot no. 103 Mpeketoni. I am not satisfied that a prima facie case has been established.

7. On the question of damages, it is apparent that the plots have a monetary value and damages would be adequate compensation to the plaintiff.

8. On the material before me, I am not convinced that it would be just to grant the orders sought by the plaintiff in the present application. The same is dismissed. Costs will be in the cause.

Delivered and signed this 5th day of **June, 2012** in the presence of Mr. Mwadilo holding brief for Mr. Omwanacha for the plaintiff, Mr. Okuto holding brief for Mr. Wakahiu for defendants.

C. W. MEOLI

JUDGE