



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MALINDI**

**CIVIL SUIT 5 OF 2012**

**NICHOLAS PATRICE TABUCHE .....PLAINTIFF**

**VERSUS**

**ANSAZI GAMBO TINGA**

**SAFARI GAMBO TINGA**

**THE REGISTRAR OF TITLES, KILIFI.....DEFENDANTS**

**R U L I N G**

By the Notice of Motion dated 20<sup>th</sup> January, 2012, the plaintiff seeks order sot restrain the 1<sup>st</sup> and 2<sup>nd</sup> defendants from selling, transferring, alienating and/or disposing of land parcels LR KILIFI/MTWAPA 3543, 3544 and 3545, and orders directing the 3<sup>rd</sup> defendant to cancel the registration of the suit property in favor of the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The application is supported by the affidavit of the applicant. The application is opposed through the respondent's replying affidavit.

In summary, the plaintiff's claim is based on a disputed sale agreement about 1984 between himself and one Gambo Tinga, now deceased. The first and second defendants are the widow and son, respectively of the deceased and are presently the registered owner of the suit property. They refute the applicant's claims and deny the alleged sale agreement.

This being an application for interim injunctive orders the applicable principles are those settled in **Giella Vs Cassman Brown & Co. Ltd.**, namely:

1. Whether the applicant has demonstrated a prima facie case with the probability of success.
2. Whether the applicant will suffer irreparable damage if the orders sought are denied.
3. If in doubt, the court will consider the balance of convenience.

Having considered all the material placed before me, I take the following view of the matter.

The applicant's claim appears traught with both factual and legal imponderables: as for example the relationship between plot 393 or 393D referred to in his exhibited agreement and plot 694 whose subdivision created the suit property in this case. Secondly the applicant claims to have entered in the sale agreement in 1984 from the deceased and it is open to debate whether the claim is sustainable in light of the provisions of the Limitation of Actions Act and other Laws relating to conveyance of title to land. In

addition, there is the question of the succession cause in respect of the estate of the deceased which is now determined. Clearly the sale agreement was between the applicant and the deceased and not the defendants. And, through he has sued them as representatives of the estate of the deceased, the defendants question why the plaintiff did not participate in the succession cause to safeguard his interests. The applicant claims but has not tendered any evidence of ever being in possession of the suit property. This alleged possession is contested by the defendants. On the first test I am not persuaded that the applicant has mustered the necessary threshold neither the second. Because clearly the subject matter is capable of quantification, but further the applicant has not bothered to tender any photos or such other evidence of his alleged contended occupation of the suit property.

Equity does not aid the indolent. The applicant allegedly purchased some undefined interest in the deceased's portion of land in 1986. The deceased died in 1991. It is not clear why the applicant took no steps to complete the sale. He seems to have suddenly been prompted to action in 2011 upon realizing that the widow and son of the deceased have obtained titles in their names.

I am not satisfied that this is a proper case in which to grant the injunction sought and will dismiss the application with costs in the cause.

Read, delivered and dated at Malindi this 3<sup>rd</sup> day of **September, 2012** in the presence of:

Court clerk- Leah, Evans

**C. W. Meoli**  
**JUDGE**