



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 2345 OF 1997**

**MERCY NDUTA KING'ARA.....PLAINTIFF**  
**-versus-**  
**SAMUEL KING'ARA MIKURO.....DEFENDANT**

**R U L I N G**

The applicant has moved the court under Order 39 of the Civil Procedure Rules and section 3A of the Civil Procedure Act for orders that the respondent be restrained from selling, charging, transferring or in any manner alienating the properties set out in the Chamber Summons. The application is supported by an affidavit sworn by the applicant to which grounds of opposition and replying affidavit have been filed. Both learned counsel have also addressed the court. The thrust of the applicant's case is to be found in paragraph 3 of the affidavit in support of the application which reads as follows:

“3. THAT I am informed by mutual friends which information I verily believe to be true that the respondent is in the process of selling off and or transferring properties subject of these proceedings so as to vegate these proceedings.”

It is a requirement of law that affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove. Where an affidavit contains statements of information and belief sources and grounds thereof are to be disclosed. (see Order 18 Rule 3 of the Civil Procedure Rules)

The applicant's affidavits falls short of that and considering the drastic orders sought especially where no evidence of ownership has been advanced at this stage, on that ground alone the applicant must fail. The applicant has to wait for her day in court when she will be in a position to justify her claim in line with her pleadings. For now the application is dismissed with costs.

Dated and delivered at Nairobi this 28th day of April, 1998.

A. MBOGHOLI MSAGHA

JUDGE